Supreme Court of the United States

OCTOBER TERM, 1946

No. 949

GREAT LAKES DREDGE & DOCK COMPANY, ET AL.,

Petitioners,

versus

PHILIP J. CHARLET, ADMINISTRATOR, DIVISION OF EMPLOYMENT SECURITY, LOUISIANA DEPARTMENT OF LABOR, (C. C. HUFFMAN, Administrator, etc., substituted in the place and stead of Philip J. Charlet).

ORIGINAL BRIEF ON BEHALF OF PETITIONERS

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MISCELLANEOUS

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May It Please The Court:

STATEMENT OF THE CASE

This is a declaratory judgment proceeding to determine the validity of the Louisiana Unemployment Compensation Act, as amended,[1] in its application to petitioners'

[1]Act 97 of 1936, as amended by Act 164 of 1938 and Acts 10 and 11 of 1940. The provisions of these acts relied on herein (unless otherwise specified) are reproduced in appendices to the petition for *certiorari* heretofore filed herein.

maritime employment. The validity of the act is challenged under Article 3, Section 2, and Article 1, Section 8, Clause 18, of the Federal Constitution, and on the ground that Congress has already preempted the field of regulation of maritime employment. The Circuit Court of Appeals affirmed (R. 55) the judgment of the district court (R. 27), holding the act constitutional as applied to such employment, and this Court has granted *certiorari*.

Petitioners are engaged from time to time in the operation and navigation, on the navigable waters of the United States within the State of Louisiana, of dredges and appurtenant vessels documented under the laws of the United States and licensed to engage in the coasting trade. In the course of these operations petitioners must have officers and crews in employment to operate and navigate their vessels. It is this employment which the State of Louisiana claims the power to regulate and tax under its Unemployment Compensation Act.

Under the provisions of the act, employers are required to comply with the regulations prescribed therein and to pay contributions equal to a certain percentage of wages payable on covered employments.[2] As originally enacted,[3] the act provided that the term "employment," as used therein, did not include "services performed as an officer or member of the crew of a vessel on the nevigable waters of the United States." It was amended in 1938[4] to provide that the term "employment" includes:

> "Services performed as an officer of member of a crew of a vessel on the navigable waters of

[2]Act 164 of 1938, Section 6, 10.
[3]Act 97 of 1936, Section 18 (g) (7).
[4]Act 164 of 1938, Section 18 (g) (6) (C).

the United States *customarily operating between ports in this state and ports outside this state.*"

While petitioners' vessels operate outside the State of Louisiana, in various states and territories of the United States, and in foreign countries, they do not customarily operate between ports in Louisiana and ports outside of Louisiana. Accordingly, the officers and members of the crews of petitioners' vessels are covered by the provisions of the statute.

DECLARATORY JUDGMENT PROCEEDING APPROPRIATE

The Court has requested counsel to discuss "whether the declaratory judgment procedure can be appropriately used in this case where the complaint seeks a judgment against a state officer to prevent enforcement of a state statute." A similar question was posed by the Court in *Nashville C. & St. L. Ry. v. Wallace*,[5] which arose prior to the adoption of the Federal Declaratory Judgment Act.[6] There the Court affirmed a declaratory judgment rendered by the Tennessee Supreme Court, holding constitutional a state gasoline tax as applied to the complainant. In the course of its opinion, the Court fully discussed the declaratory judgment procedure in relation to federal judicial authority, and, finding that "the judiciary clause of the Constitution . . . did not crystallize into changeless form the procedure of 1789 as the only possible means for presenting a case or controversy otherwise cognizable by the federal courts,"[7] fully upheld the declaratory judgment proce-

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[5]288 U. S. 249 at p. 259 (1933).
[6]28 U. S. C. 400.
[7]*Op. cit. supra* note 5, at p. 264.

dure as a proper framework within which to exercise the federal judicial power. The same decision was rendered in a proceeding under the Federal Declaratory Judgment Act.[8]

Since the adoption of the federal act, many proceedings against state and federal officers seeking declarations of constitutionality, both of state[9] and of federal[10] statutes, and of the validity of state taxes,[11] have been decided both by this Court,[12] and by inferior federal courts,[13] where the essentials of a justiciable controversy were presented to the Court.[14] Indeed, the Committee Reports indicate that the Congress expected litigation respecting the constitutionality

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[8]Aetna Life Ins. Co. v. Haworth, 300 U. S. 227 (1937) at p. 240.

[9]See Wright v. Central Ky. Nat. Gas. Co., 297 U. S. 537 (1936); Curry v. McCanless, 307 U. S. 357 (1939); Southern Pacific Co. v. Conway, 115 F. (2d) 746 (CCA 9-1940); Johnson, et al v. Deerfield, 25 F. Supp. 913 (D. Mass.-1939); Montajano v. Rayner, 33 F. Supp. 435 (D. Idaho-1939); Public Cleaners, Inc. v. Florida Dry Cleaning & Laundry Board, 32 F. Supp. 31 (S. D. Fla.-1940); Starr v. Schram, 24 F. Supp. 886 (E. D. Mich.-1938); State of Texas v. Anderson, Clayton & Co., 92 F. (2d) 104 (CCA 5-1937); U. S. v. Standard Oil Co., 21 F. Supp. 645 (S. C. Cal.-1937).

[10]Currin v. Wallace, 306 U. S. 1 (1939); Ashwander v. Tennessee Valley Authority, 297 U. S. 288 (1936); Bowie v. Gonzales, 117 F. (2d) 11 (CCA 1-1941); Feagate Co. v. Kirkland, 19 F. Supp. 152 (S. D. Fla.-1937); Fresno County v. Commodity Credit Corp., 112 F. (2d) 639 (CCA 9-1940); John A. Gebelein, Inc. v. Melbourne, 12 F. Supp. 105 (D. Md.-1935); Group Health Assn. v. Moor, 24 F. Supp. 445 (D. C. Dist. Co., 1938); Penn v. Glenn, 10 F. Supp. 483 (W. D. Ky.-1935); Roloff v. Perdue, 31 F. Supp. 739 (N. D. Iowa-1939); Wallace v. Hudson-Duncan & Co., 98 F. (d) 985 (CCA 9-1938).

[11]Texas v. Florida, 306 U. S. 398 (1939); Colorado Nat. Bank of Denver v. Bedford, 310 U. S. 41 (1940); see also Allen v. Regents of University System of Georgia, 304 U. S. 439 (1938). Commodity Credit Corp. v. County of Okla., 36 F. Supp. 694 (W. D. Okla.-1941); Consolidation Coal Co. v. Martin, 113 F. (2d) 813 (CCA 6-1940); Gully v. Interstate Natural Gas Co., 82 F. (2d) 145 (CCA 5-1936); Sancho v. Humacao Shipping Corp., 108 F. (2d) 157 (CCA 1-1939); Thompson v. State of La., 98 F. (2d) 108 (CCA 8-1938); U. S. v. Query, 37 F. Supp. 972 (E. D. S. Car.-1941).

[12]See cases cited, notes 9, 10, 11, *supra*.

[13]See cases cited *supra*, notes 9, 10, 11, and those collected in Borchard, Declaratory Judgments (2d ed., 1941) Chapter X, pp. 764, *et seq.*

[14]*Cf.* Electric Bond & Share Co. v. Securities & Exchange Commission, 303 U. S. 419 (1938); U. S. v. West Virginia, 295 U. S. 463 (1935); Ashwander v. Tennessee Valley Authority, *op. cit. supra*, note 10.

of legislation to be one of the uses to which the declaratory judgment procedure would be put.[15]

The instant case presents all of the requirements of a justiciable controversy appropriately cognizable in a declaratory judgment proceeding. The record shows that while petitioners deny that the state act can constitutionally be applied to their maritime employment, respondent "intends to and has always intended to, enforce each and every provision of the same, as he is charged by law to do; that he has no discretion in the enforcement of said statute and has no authority to waive any of its provisions . . ."[16] Thus there is here present "a case of actual controversy," not involving federal taxes,[17] between adversary parties, seeking a judicial determination of their legal rights of a kind traditionally cognizable in the federal courts.[18]

The device of a suit against a state officer to test the constitutionality of a state statute is perhaps the most char-

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[15]See Report of the House Committee on the Judiciary, 73d Cong., 2d Sess., Rept. #1264: "The declaratory judgment is a useful procedure in determining jural rights, obligations, and privileges, but may be applied to the ascertainment of almost any determinative fact or law. The declaration of a status was perhaps the earliest exercise of this procedure, such as the legality of marriage, the construction of written instruments, and the *validity of statutes.*" (Italics ours.)

[16]Answer, Article XI, (R. 15).

[17]Authority to declare with respect to federal taxes has specifically been withdrawn from the federal courts by an amendment to the Judicial Code under the Revenue Act of 1935. *Ibid*, note 6. The very fact that such authority was withdrawn only with respect to federal taxes indicates that the authority to make declarations with respect to the validity of state taxes was left unimpaired.

[18]See Nashville, C. & St. L. Ry. v. Wallace, *loc. cit. supra*, note 5, particularly at pp. 261-265; Aetna Life Ins. Co. v. Haworth, *op. cit. supra*, note 8, at pp. 243-244. It seems clear that a threat of immediate, irreparable injury is not necessary to invoke the declaratory procedure. Aetna Life Ins. Co. v. Haworth, *id.*, at p. 241; Currin v. Wallace, *op. cit. supra*, note 10, at p. 9. ". . . when a threat is made or an intention expressed by such an officer to enforce a law alleged to be unconstitutional he may be sued as an individual for a judgment declaring the act to be unconstitutional in a federal court." Sou. Pac. Co. v. Conway, 115 F. Supp. 746 (CCA 9-1940) at p. 749.

acteristic feature of American constitutional law,[19] and, indeed, seems specifically to have been contemplated by the Congress in the adoption of the Declaratory Judgments Act.[20] Declaratory judgments have been used fruitfully in other federal governments (notably Canada and Australia) judicially to delimit the respective powers of State and Nation.[21]

Contrary to the weight of authority, which recognizes the propriety of declaratory relief where the validity of a state tax is brought in question,[22] one federal district court has interpreted the Johnson Act[23] as restricting the use of the federal declaratory judgment procedure in state tax cases to instances in which an injunction could be granted.[24] This decision has not been followed,[25] and seems wrong in principle.

The Johnson Act by its very terms restricts the power of the federal courts only with respect to *injunctions* against the collection of state taxes,[26] and the Committee Reports on the bill make it plain that its only purpose was to prevent federal courts from interfering with the orderly collection of state taxes.[27] The companion statute prohibiting injunctions interfering with the collection of federal

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[19]See Osborn v. Bank of the United States, 9 Wheat. 738 (1824); Ex parte Young, 209 U. S. 123 (1907); Poindexter v. Greenhow, 114 U. S. 270 (1885); Sou. Pac. Co. v. Conway, *supra*, note 18.

[20]*Ibid.*, note 15.

[21]See cases collected in Borchard, *Declaratory Judgments* (2d. ed., 1941) p. 773; Annotation, 114 A. L. R., p. 1361, *et seq.*

[22]See Annotation, 132 A. L. R. 1130.

[23]28 U. S. C. A. Sec., 41 (1).

[24]See Collier Advertising Service v. City of New York, 32 F. Supp. 870 (1940).

[25]*Contra.*, Morrison-Knudsen Co. v. Board of Equalization, 35 F. Supp. 553 (1940).

[26]*Ibid.*, note 23.

[27]See Reports on S. 1515, 75th Cong., 2d Sess.; Senate, No. 1035, Calendar No. 1074; House No. 1508.

taxes[28] was interpreted not to apply to declaratory judgments with respect to the validity of federal taxes.[29]

Moreover, the mere pendency of a federal declaratory judgment proceeding can in no way interfere with the collection of state taxes. No state officer is enjoined, and such officer may, and indeed, if he deems it necessary for the protection of the interests of the state, should proceed in a state court to assess liens and collect the taxes in the ordinary course, notwithstanding the pendency of a federal declaratory judgment proceeding.[30] Hence, such proceeding is in no manner within the meaning, spirit, or intendment of the Johnson Act, and, as pointed out in the *Morrison-Knudsen* case,[31] such a construction of the Act is unacceptable.

Moreover, the Johnson Act is restricted to state tax litigation. The present suit concerns the validity of state regulation of maritime employment, of which the tax is but a part. The mere fact that a tax is collaterally involved cannot affect the authority of the court to render a declara-

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[28]26 U. S. C. A. (I. R. C.) Sec. 3653; 53 Stat. 446.

[29]See Penn v. Glenn, 10 F. Supp. 483 (1935); Vogt & Sons v. Rothensies, 11 F. Supp. 225 (1935).

[30]See Carpenter v. Edmonson, 92 F. (2d) 895 (CCA 5-1937); Toucey v. New York Life Ins. Co., 314 U. S. 118 (1941); 28 U. S. C. A. § 379.

[31]*Ibid.*, note 25. The court there said: ". . . When the amendment of 1935 to the Declaratory Judgment Act became a law the history in the courts was before the Congress that the Act had been invoked in State taxing statutes and yet Congress saw fit to include a prohibition with respect to Federal taxes only. Again, in 1937, with the same history before the Congress in connection with the amendment to the general jurisdiction of the district courts over State taxing matters, it evidently saw no reason to include any prohibition against the use of the Declaratory Judgment Act, but limited the jurisdiction by injunction of those courts to cases in which there was no plain, speedy and efficient remedy at law or in equity in the State courts. As it appears to me, these two incidents make it plain that the Congress did not desire or intend to change or limit the jurisdiction of the Federal courts under the Declaratory Judgment Act in regard to State taxing statutes or the law in the one place or the other would have been so written."

tory judgment as to the constitutionality of state regulations of maritime employment.

Finally, the Johnson Act restricts the authority of the Court only where "a plain, speedy and efficient remedy may be had at law or in equity in the courts of such State."[32] In the instant case petitioners are afforded absolutely no remedy under the circumstances of this case by the state law. Louisiana prohibits the use of the injunction in tax matters;[33] permits no relief by declaratory judgments; nor has it established a general administrative procedure for tax cases. The provision of Section 13 of the Louisiana Unemployment Compensation Act,[34] providing for "refunds and adjustments" of taxes paid, obviously are not applicable to a claim that the tax has unconstitutionally been imposed;[35] nor does it afford a remedy "at law or in equity."

The only remedy provided by Louisiana law for relief from unauthorized taxes is payment under protest followed by suit for recovery, where the taxpayer is "resisting the payment of any amount found due, or the enforcement of any provision of such laws in relation thereto."[36] Here, however, the Administrator, while insisting that he intends to enforce the tax against petitioners,[37] has nonetheless refrained from assessing any tax against them, or from instituting any proceedings to enforce collection thereof, thus preventing petitioners from availing themselves of the only

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[32]28 U. S. A. 41 (1).

[33]*Op. cit. infra.*, note 36, Sec. 1.

[34]Louisiana Act 97 of 1936, as amended by Acts 164 of 1938, 10 and 11 of 1940, and 133 of 1942. See Appendix E herein, p. 64.

[35]See Grosjean v. American Press, 297 U. S. 233 (1936).

[36]La. Act 16, 2d Extra Sess. (1934), as amended by Act 24, 2d Extra Sess. 1935, and Act 330 of 1938.

[37]See *supra*, note 16.

remedy afforded by Louisiana law to test the validity of this tax as applied to them.

Hence, since the adoption in 1938 of the amendment to the Louisiana act here complained of, until date, petitioners have been faced with a contingent tax liability, with accumulating interest and penalties, to say nothing of possible criminal liability, without any opportunity of testing in a state court, the validity of the tax claimed from them. Obviously, even if the Johnson Act were applicable here, the "plain, speedy and efficient remedy . . . at law or in equity in the courts of such State," required by that act to deprive the federal courts of jurisdiction, is not present under the circumstances of this case.[38]

While the federal courts may exercise a discretion in assuming jurisdiction to declare constitutionality with respect to a state statute in cases dealing with local, rather than with federal law,[39] particularly when there is a pending state court proceeding,[40] no such situation is present here. Even if a discretion may be exercised in any case

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[38]Compare: Allen v. Regents of University System of Georgia, 304 U. S. 439, 449, 58 S. Ct. 980 (1937), particularly at p. 448, where, under similar harsh and uncertain circumstances, the Court both stretched equity jurisdiction to the breaking point, and held R. S. 3224 inapplicable, to permit the Regents to determine their tax liability. The Court said: "We hold that the bill states a case in equity as, upon the showing made, the respondent was unable by any other proceeding adequately to raise the issue of the unconstitutionality of the Government's effort to enforce payment."

[39]City of Chicago v. Fieldcrest Dairies, 316 U. S. 168 (1942); Railroad Commission v. Pullman Co., 312 U. S. 496 (1941); Beal v. Mo. Pac. R. Co., 312 U. S. 45 (1941).

[40]See Brillhart v Excess Ins. Co., 316 U. S. 491 (1942), at pp. 495, 481: ". . . It is enough that it appears from the record before us that the District Court did not consider whether, under applicable local law, the claims sought to be adjudicated by the respondent in this suit for a declaratory judgment had either been foreclosed by Missouri law or could adequately be tested in the garnishment proceedin' pending in the Missouri state court. . . . The cause should be remanded to the District Court in order that it may properly exercise its discretion in passing upon the petitioner's motion to dismiss this suit."

the unusual facts of the instant case, as set out above, make the assumption of jurisdiction here appropriate.

No question of the reasonableness or unreasonableness of a state regulation involving an application of the purpose and operation of the statute in its fact milieu is here involved. Contrary to the situations in the *Fieldcrest Dairies* and similar cases[41] the issue presented here is purely and solely a federal question, involving no question of local law, and requiring a decision entirely under the federal Constitution. The action is appropriately brought under the Federal Declaratory Judgment Act.

CHARACTER OF EMPLOYMENT

The stipulation[42] describes in detail the various types of dredges and their appurtenant complementary craft involved in this litigation, and the functions of the various employees. The vessels are engaged in improving navigable channels and waters and creating fill. Some of the vessels are self-propelled, and others have the ability to move them-

[41]See Railroad Commission v. Pullman Co., *op. cit. supra*, note 39, at pp. 499-500: ". . . The last word on the meaning of Article 6445 of the Texas Civil Statutes, and therefore the last word on the statutory authority of the Railroad Commission in this case, belongs neither to us nor to the district court but to the supreme court of Texas. In this situation a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication . . . The reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court . . ."; Chicago v. Fieldcrest Dairies, *op. cit. supra*, note 39, at pp. 171-172: ". . . Illinois has the final say as to the meaning of the ordinance in question. It also has the final word on the alleged conflict between the ordinance and the state Act. The determination which the District Court, the Circuit Court of Appeals or we might make could not be anything more than a forecast—a prediction as to the ultimate decision of the Supreme Court of Illinois. Here as in the Pullman case 'a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication.' . . ."; Beal v. Mo. Pac. R. R. Corp., *op. cit. supra*, note 39.

[42]The facts are admitted in the answer or stipulated (R. 17 seq., 29, 56-57).

selves by manipulating swinging wires in coordination with swinging anchors and spuds. In this way, a dredge may move forward as much as 2000 feet per day, from time to time describing an arc of some 400 feet, and if dredging in a river-boundary or in coastal waters, may constantly cross and re-cross state lines. They also operate from side to side of such rivers and from place to place in such coastal waters, and in so doing operate in and out of the state from time to time.

The dredges and other vessels involved are subject to all maritime laws and liabilities, and are amenable to all navigation rules applicable to other vessels. The Pilot Rules of the Department of Commerce, prescribed pursuant to Acts of Congress, "relating to the navigation of vessels," are applicable generally and by specific mention, to dredges both while "held in stationary position by moorings or spuds," and while "under way." All of the dredges and other vessels are documented by being enrolled and licensed by the Bureau of Marine Inspection and Navigation of the Department of Commerce;[43] and some hold classification certificates of seaworthiness issued by the American Bureau of Shipping.

The personnel of a dredge consists of the following complement of officers and crew: The master; first officer; purser; four mates; twelve or more deck hands; a chief engineer; three assistant engineers; fourth assistant engineer; three or more engine room oilers; one to three deck

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[43]The Certificate of Enrollment and License is in statutory form (R. S. 4321, 46 U. S. C. A. 263), and provides that "License is hereby granted for the said vessel to be employed in the coasting trade," and "that this license shall not be used for any other vessel, or for any other employment than is herein specified." When engaged in foreign trade, the documentation is changed to registration for that trade. See: In re Benglase Sand & Gravel Co., 76 F. 2d (CCA 7-1935) 593, 595.

oilers; three or more firemen; four levermen; a machinist and one or more helpers; a welder and one or more helpers; a ship's carpenter and helper; an electrician and helper; a chief steward, two or more cooks; three or more messboys; one or more cabin boys and one or more motorboat operators; four or more tug captains; and four or more tug mates or engineers. As expressly stipulated, the employees involved are "employed in the navigation and operation" of petitioners' vessels (R. 17).

Many of the officers aboard the dredges, while not always under strict requirements in that regard, hold federal licenses. By training and experience, and the nature of the work and services rendered, the officers and crew of a dredge are required to meet the same physical, mental and disciplinary standards, and to perform functions similar to those required of any other seamen. They are afforded the facilities of the U. S. Marine Hospitals, the same as any other seamen. (R. 24).

When the dredges are on voyages from one scene of operations to another, whether within the state, to another state, or to a foreign country, each vessel transports her officers and crew, her machinery, equipment, fuel and supplies. (R. 18).

Under the essentially similar companion measure to the Louisiana Unemployment Compensation statute, that is, the Federal Social Security Act, the Treasury Department, through the Bureau of Internal Revenue, has ruled, both generally, and specifically with regard to some of the plaintiffs herein, and to some of the dredges here involved, that the dredges are "vessels," and the persons employed there-

on are "officers or members of the crew" within the meaning of Title VIII of the Social Security Act.

The Bureau of Internal Revenue has ruled unequivocally that:[44]

> "Where the dredges . . . are operated 'on the navigable waters of the United States,' the services performed by the officers and members of the crew come within the excepting provisions of Section 907(c)(3) *supra*."

The Regulations further provide:[45]

> "The expression 'officers and members of the crew' includes the master or officer in charge of the vessel, however designated, and every individual, subject to his authority, serving on board and contributing in any way to the operation and welfare of the vessel. The exception extends, for example, to services rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters and chambermaids, and by seal hunters and fishermen on sealing and fishing vessels."

The Bureau has ruled specifically, in a letter dated January 8, 1937, addressed directly to one of the plaintiffs herein, with reference to employment aboard a number of dredges here involved, that such employees were "officers and members of the crew" of the vessels.[46] Indeed, where an assessment was actually made against one of the plain-

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[44]See: Internal Revenue Bulletin XVI-4-8504, S. S. T. 78 (January 25, 1937).
[45]Regulation 91, Art. X, pp. 7-8.
[46]See letter Appendix A.

tiffs for federal unemployment compensation taxes for employees aboard a number of the dredges herein involved, the Bureau of Internal Revenue abated the tax claim, and rescinded the assessment.[47]

Although the federal act was amended after the issuance of the above regulations, no attempt was made to set them aside. There has therefore been a legislative recognition and approval of these regulations.[48]

The District Court (R. 34) and the Circuit Court of Appeals (R. 57) assumed without deciding that the persons employed aboard petitioners' vessels are officers and members of the crew of vessels on the navigable waters of the United States and within admiralty jurisdiction. It seems quite clear that both courts were correct in making this assumption.[49]

THE REGULATORY NATURE OF THE LOUISIANA ACT

A fundamental purpose of unemployment compensation legislation, both state and federal, is so to regulate

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[47]See Appendix B.

[48]McCaughn v. Hershey Chocolate Co., 283 U. S. 488 (1931); McGoldrick v. Gulf Oil Corporation, 309 U. S. 414 (1940).

[49]Ellis v. United States, 206 U. S. 246 (1906); Kibadeaux v. Standard Dredging Co., 81 F. 2d (CCA 5-1936), cert. den. 299, U. S. 549 (1937); Saylor v. Taylor, 77 Fed. 476 (CCA 4-1896); Gayle v. Union Bag & Paper Corp., 116 F. 2d 27 (CCA 5-1940), cert. den. 313, U. S. 559 (1941); Woods Bros. Const. Co. v. Iowa U. Compensation Com'n., 229 Ia. 1171, 296 N. W. 345 (1941). In *Southern Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251 (1940), the workman involved was occasionally employed on a lighter supplying coal to a vessel. "His employment was somewhat akin to temporary employment." The admissions in the stipulation herein clearly show that the employment herein is in no way similar to that in the *Basset* case. Cf. *infra*, note 112. Moreover, in the *Bassett* case, the Court was concerned with the meaning of words used in congressional legislation. (33 U. S. C. A. 901, and supp.). In any event, the employment was within the admiralty and maritime jurisdiction of the United States.

employment as to reduce unemployment. We have this on the authority both of the Social Security Board and of the President of the United States, who, in his first Message transmitting the Social Security Bill to Congress, in January of 1935, declared:

> "An unemployment Compensation System should be constructed in such a way as to afford every practicable aid and incentive toward the *larger purpose of employment stabilization.*" (Emphasis supplied.)

In the booklet published by the Social Security Board, so heavily relied on as authority by defendant, called "*Unemployment Compensation, What and Why,*" the following is given as the fundamental theory of unemployment compensation laws in the United States:

> "Based on the theory that the employer was responsible for unemployment, it assessed the entire cost on him on the assumption that if he bore the cost of the system, he would make every effort *to stabilize employment* and thereby prevent unemployment."[50] (Emphasis supplied.)

Again, the authority above referred to comments on the underlying principle of unemployment compensation as follows:[51]

> "The advocates of the employer reserve type of plan, in placing their emphasis on the stabilization of employment, feel that, since the em-

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[50] *Unemployment Compensation, What and Why,* Social Security Board (1937), p. 22. This discussion is with reference to the Wisconsin Act, the prototype of American Unemployment Compensation legislation.

[51] *Ibid.,* at pp. 40-41.

ployer is, to a considerable extent, responsible for the unemployment of his plant, he will do everything in his power *to prevent that unemployment* if he has to pay for it." (Emphasis supplied.)

And finally, the Social Security Board says:[52]

> "*Unemployment compensation must be regarded as only one aspect of the approach to the solution of the unemployment problem . . . The problem is, of course, broader than that of providing unemployment compensation*, comprehending as it does the inherent factors in our industrial system which cause unemployment, as well as the alleviation of distress which goes beyond the limits of unemployment compensation." (Emphasis supplied.)

With these official pronouncements of the basic theory and philosophy of state unemployment compensation plans, it is now possible to turn to the Louisiana statute to investigate the extent to which, and the manner in which, it regulates employment (and specifically maritime employment) in seeking to prevent unemployment; and how the unemployment compensation tax fits into this structure.

The act has for its purpose, avowed in its Declaration of Policy: "encouraging employers to provide more stable employment." One of the forms which such "encouragement" takes in the act,[53] is tax penalties and tax reductions

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[52] *Ibid.*, at p. 51.

[53] While the present Louisiana unemployment compensation statute (Act 11 of 1940) does not contain a merit system feature, the prior statute, which applies to a portion of the period involved in this litigation, does contain such system, and shows clearly the manner in which the unemployment compensation tax is to continue to operate as an additional sanction for the regulation of employment in Louisiana. Indeed, the present statute contains the following provision: (La. Act

to the employer. The statute contemplates payment by employers of "contributions" of a percentage of wages paid by them with respect to employment according to a rising scale reaching ultimately 2.7 per cent of the payroll.[54] The employers' "contribution" rate then becomes based on "benefit experience," determined in the following manner.[55] The Commissioner is required to maintain a separate account for each employer, crediting his account with all the contributions paid in his own behalf, and charging his account with all amounts paid out as benefits.[56] The act then goes on to provide:[57]

> "The Commissioner shall . . . classify employers, industries, and/or occupations with respect to the unemployment hazard in each . . . He may apply such form of classification or rating system *which in his judgment is best calculated* to rate most equitably the employment risk of each employer or group of employers and to *encourage*

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11 of 1940, § 6 (c): "Study of Experience Rating. The Administrator shall investigate and study the operation of this Act and actual experience hereunder with a view to determining the feasibility of establishing a rating system which would equitably rate the unemployment risk and fix the contribution to the fund of each employer, and which would encourage the stabilization of employment. The Administrator shall submit his report and recommendations to the Governor and the Legislature." This provision clearly shows the State's intention of continuing to use the tax as an essential of the regulatory system, and that it is merely a matter of accumulating sufficient experience to place the regulation into operative effect. In the meantime, the very accumulation of the experience is tantamount to the application of the tax sanction envisioned by the Act, because the rate subsequently to be established by the legislature will reflect the "experience" of each employer or group of employers being compiled today. See: Report to Governor, Louisiana Unemployment Compensation Commission, "Experience Rating in Louisiana," April, 1942.

[54] Act 164 of 1938, Sec. 6(b) (3). This rate was reached by Dec. 31, 1937.

[55] *Ibid.*, Sec. 6(c). The act contemplates a waiting period, until July 1, 1941, before the "benefit experience" or "merit rating" plan goes into effect, in order to accumulate capital in the fund.

[56] *Ibid.*, Sec. 6 (c) (1).

[57] *Ibid.*, Sec. 6 (c) (3).

the stabilization of employment." (Emphasis supplied.)

On the basis of such classifications the Commissioner is authorized to "determine the contribution rate applicable to each employer,"[58] which may fluctuate, at the Commissioner's discretion, between 1 per cent and 3.6 per cent of total wages paid.[59] Hence, it is apparent that the whole purpose of the merit-rating-system is to regulate employment so as to reduce the number of separations from employment by penalizing the employer who discharges his employees, or whose employees quit, for any cause. When this regulatory statute is applied to maritime workers, it becomes a direct regulation of the contract of maritime employment, by penalizing the interruption of such employment.

Thus, a maritime employer who customarily releases the crew of his vessel during the period in which it is laid up, may find himself, by the application of the formula set out in the act, penalized to the extent of 2.6 per cent of his total payroll, should the benefits paid to his employees from the Unemployment Compensation Fund deplete his account with the Commission.

Moreover, there is a well-known practice in maritime employment—a custom sanctioned by federal statutes[60]—of "signing off" the vessel at the termination of a period of employment. According to maritime custom, maritime workers are not re-employed by the owners or master at the termination of their employment, and do not ordinarily immediately enter into a second employment aboard the

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[58] *Id.*
[59] *Ibid.*, Sec. 6 (c) (3) (ii).
[60] See 46 U. S. C. A. 596, 642.

same vessel, as would land-workers at the same plant. On the contrary, they customarily register at maritime hiring halls where they await their turn for re-employment, under a system of rotation.[61] Federal statutes recognize and facilitate this custom by requiring that seamen be given a prompt discharge accompanied by full settlement of their wages.[62] Yet the operation of the Louisiana act would force the abandonment of this long-established maritime employment custom, or penalize the employer for abiding by it, by increasing his rate of tax, because of the benefits that would inevitably be paid his employees, and charged against his account, while they were awaiting re-employment by rotation through the maritime hiring halls.

The tax aspect of the Louisiana statute is but one of its regulatory features of employment relationship. It also calls for a host of other regulations, of a most comprehensive character, entirely independent of the tax, and in no way connected with its collection or enforcement.[62a] For example, the act requires each employing unit to keep "true and accurate records, containing such information as the Commission may prescribe," which must be available to him or his representatives at all times for inspection and copying. Moreover, he, his representatives, or any members of the Board of Review, may require of the employer "any sworn or unsworn reports . . . necessary for the effective administration of this Act."[63] The Commissioner, or the Board of Review, or their representatives, all have "power to administer oaths . . . take depositions . . . issue

[61]For a full description of this system, see Testimony of Mr. George E. Bigge in Hearings on the Social Security Act before the House Committee on Ways and means, *op. cit. infra*, note 184.

[62]*Ibid.*, note 60.

[62a]The tax collection and enforcement provisions are elaborate, and are contained exclusively in Section 13 of the Act, reproduced in the appendix hereto, p. 64.

[63]Act 164 of 1938, Sec. 10 (g).

subpoenas to compel the attendance of witness and the production of books, papers, correspondence, memoranda, and other records . . . in connection with a disputed claim or the administration of this Act,"[64] and to force compliance by application to the courts to enforce the subpoena through their contempt power, or by criminal proceedings.[65]

These broad and comprehensive regulatory powers are conferred upon the Commissioner, not alone with respect to the collection of the unemployment compensation tax, but also in connection with the Commissioner's authority with regard to "employment stabilization," and his power in making and enforcing rules and regulations, and in determining eligibility.

With specific reference to "employment stabilization" the act has the following to say:[66]

> "The Commissioner with the advice and aid of advisory councils, and through the appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; . . . to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible . . ."

With regard to the rule-making power of the Commissioner, the act gives him the authority to adopt, amend or rescind, all rules and regulations that he shall deem necessary or suitable to the end of administering the act.[67]

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[64] *Ibid.*, Sec. 10 (h).
[65] *Ibid.*, Sec. 10 (i), Sec. 15.
[66] Ibid., Sec. 10 (f).
[67] Ibid., Sec. 10 (a), (b).

Perhaps the most immediate every-day interference by the Commissioner with maritime employment relationship would occur in the determinations he must make of the eligibility of idle workers to receive unemployment compensation. These "determinations" directly affect the employer's tax rate, under the fluctuating scale, and thus operate as regulations of employment, because the Commissioner may find that the worker is ineligible for benefits,[68] in which case no withdrawals will be charged against the employer's account, or he may postpone as much as ten weeks, the eligibility date for payment of benefits,[69] thus substantially increasing the probability that the workers will gain employment and not cause withdrawals against the employer's account.[70]

Such determinations depend upon (1) whether or not the worker "left work voluntarily without good cause;"[71] (2) whether he was discharged for misconduct;[72] (3) the seriousness of the misconduct;[73] (4) whether available work is "suitable,"[74] (5) the "degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence;"[75] (6) whether the position offered is vacant due to a strike, lockout or labor dispute;[76] (7) whether the wages, hours or other conditions of the

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[68] *Ibid.*, Sec. 3(b). See Appendix C herein, p. 59.
[69] *Ibid.*, Sec. 4; particularly subsection (d). See Appendix D herein, p. 61.
[70] For a discussion of the "Waiting Period" requirement, see C. C. H., Unemployment Insurance Service, All-State Treatise, Paragraph 1955.
[71] Act 164 of 1938, Sec. 4(a). See Appendix D herein, p. 61.
[72] *Ibid.*, Sec. 4(b).
[73] *Id.*
[74] *Ibid.*, Sec. 4(c).
[75] *Ibid.*, Sec. 4(c)(1).
[76] *Ibid.*, Sec. 4(c)(2)(a).

work offered are substantially less favorable than those prevailing for similar work in the locality;[77] and (8) whether the particular employee is participating in or directly interested in a labor dispute.[78]

All of the above factors must be considered by the Commissioner in making a determination upon a claim for benefits, and he has at his command, and must utilize, all of the above described machinery for subpoenas, testimony, regulations of the books and accounts of the employer, and general supervision over employment practices. This calls for a most minute, comprehensive and all-inclusive regulation of the maritime employment relationship when the act is applied to maritime employment.

Moreover, because of the nature of the sanction applied in the form of increased taxes, and because of the "benefits" received by the employee, the employer-employee relationship is definitely affected and regulated by decisions of the Commissioner as to "whether or not the worker left work voluntarily without good cause"; or whether he has been discharged for misconduct, the seriousness of the misconduct, etc. Obviously, if the Commissioner takes the position that violations of certain principles established by the employer are not "misconduct" within the meaning of the act, or are so inconsequential as not to justify penalization by an increased waiting period, then the employer must either discontinue such practices or suffer the tax sanction penalty.[79]

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[77] *Ibid.*, Sec. 4 (c) (2) (b).

[78] *Ibid.*, Sec. 4 (c) (2) (d) (i).

[79] As to the regulatory nature and effect of such disqualifications, and the broad discretion of the Commissioner thereunder, see, generally, C. C. H. Unemployment Insurance Service, All-State Treatise, Paragraph 1963, *seq.*, particularly Paragraph 1970, as to misconduct.

Discipline aboard ship is a very different thing from discipline on land, and misconduct and insubordination on a vessel are infinitely more significant and more hazardous than on land. Federal statutes have been painstaking in defining and in penalizing innumerable types of misconduct,[80] including insubordination,[81] drunkenness and neglect of duty,[82] carrying sheath knives,[83] quitting without leave,[84] etc. As said very recently by this Court in the *Southern Steamship Company* case:[85]

> "Ever since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land . . . Every one and every thing depends on him. He must command and the crew must obey. Authority cannot be divided. These are actualities which the law has always recognized."

It is submitted that the Louisiana act regulates and interfered with petitioners' maritime employment.

STATE CANNOT REGULATE OR TAX ESSENTIAL INCIDENTS OF EXERCISE OF FEDERAL FRANCHISE

As above pointed out, the vessels involved in this litigation are documented, having been enrolled and licensed by the Federal Government to engage in the coasting trade. These licenses cover operations not only on the coastal wa-

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[80] 46 U. S. C. A. 701, *seq.*
[81] 46 U. S. C. A. 703.
[82] *Ibid.*, 704.
[83] *Ibid.*, 710.
[84] *Ibid.*, 701, Second.
[85] Southern Steamship Co. v. National Labor Relations Board, 316 U. S. 31 (1942) at p. 38. Also see Aguilar v. Standard Oil Co. of New Jersey, Nos. 454, [illegible], October Term, 1942.

ters, but on rivers.[86] Vessels enrolled and licensed in pursuance of the act of Congress have conferred upon them as full and complete authority to carry on the coasting trade as it is within the power of Congress to confer.[87]

The Louisiana act attempts to interfere with these licenses and to impose additional burdens on the exercise thereof. If the state has power to impose the regulations and tax called for by the act, it equally is authorized to use force to effect compliance therewith, thereby preventing the exercise of these federal licenses.

This Court has set aside state statutes making more burdensome the exercise of a franchise, privilege or right derived from the federal Constitution.[88]

With specific reference to the exercise of a federal license to engage in the coasting trade, this Court said, in *Moran v. City of New Orleans*:[89]

> "The sole occupation sought to be subjected to the tax is that of using and enjoying the license of the United States to employ these particular vessels in the coasting trade; and the state thus seeks to burden with an exaction, fixed at its own

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[86]Gibbons v. Ogden, 9 Wheat. (22 U. S.) 1, 6 L. Ed. 23 (1824); Ravenies v. United States, 37 Fed. (C. C. Ala. 1899) 447.

[87]Sinnot v. Davenport, 22 How. 227, 239-240, citing Gibbons v. Ogden, 9 Wheat. pp. 210-214.

[88]See California v. Cent. Pac. R. Co., 127 U. S. 1 (1888); Western Union Telegraph Co. v. Wright, 185 Fed. 250 (C. C. A. 5th, 1910); Same v. Same, 185 Fed. 260 (C. C. A. 5th, 1910)). See also Cent. Pac. R. Co. v. California, 162 U. S. 91 (1896); Williams v. Talladega, 226 U. S. 404 (1912); Western Union Telegraph Co. v. Weaver, 5 Fed. Supp. 493 (D. C. Neb. 1932); M'Culloch v. Maryland, 17 U. S. 316 (1819); Osborn v. Bank of United States, 22 U. S. 738 (1824); The Farmers' and Mechanics' Nat. Bank v. Dearing, 91 U. S. 29 (1875); LeLoup v. Mobile, 127 U. S. 640 (1888); Western Union Telegraph Co. v. Weaver, 5 Fed Supp. 493 (D. C. Neb., 1932).

[89]112 U. S. 69 (1884). See also Frere v. Von Schoeber, 47 L. Ann. 324, 16 So. 808, 27 L. R. A. 414 (1894); New Orleans & Memphis Packet Co. v. James, 32 Fed. 31 (C. C. La., 1887).

> pleasure, the very right to which the plaintiff in error is entitled under, and which he derives from, the constitution and laws of the United States."

In *Hall v. De Cuir*,[90] this Court had already held:

> "Throughout our history, the Acts of Congress have regulated the enrollment and license of vessels to be engaged in the coasting trade, and this court expressly determined that a state law which imposed another and an additional condition to the privilege of carrying on that trade within her waters is inoperative and void."

In *Harmon v. City of Chicago*,[91] the identical point was again under consideration, and this Court again held that no excise tax of any kind may be levied in connection with the operation of vessels licensed by the Federal Government to engage in the coasting trade.

The mere fact that the state tax is general in its application, non-discriminatory, and taxes employment in all businesses, regardless of its nature, does not render the imposition valid when sought to be applied to a federally licensed business. Much the same argument was made by the state, and rejected, in *Brown v. Maryland*,[92] where this Court, finding that a general state occupational license tax conflicted with the right acquired by an importer on payment of duty to sell his goods at wholesale, said:[93]

> ". . . it is still argued that this is not a tax upon the article, but on the person. The state, it is said, may tax occupations, and this is nothing

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[90]95 U. S. 485, 506 (1878). See also: Western Union Tel. Co. v. James, 162 U. S. 650.

[91]147 U. S. 396 (1893). See also: Sinnot v. Davenport, 22 How. (63 U. S.) 227 (1859); Foster v. Davenport, 22 How. (63 U. S.) 244 (1859); Wheeling P. & C. Transp. Co. v. City of Wheeling, 99 U. S. 283 (1879).

[92]12 Wheat, 419 (1827).

[93]*Ibid.*, at p. 444.

> more. It is impossible to conceal from ourselves that this is varying the form, without varying the substance. It is treating a prohibition which is general, as if it were confined to a particular mode of doing the forbidden thing. . . . It is true, the state may tax occupations generally, but this tax must be paid by those who employ the individual, or is a tax on his business . . . So, a tax on the occupation of an importer is, in like manner, a tax on importation. . . . This the state has not the right to do, because it is prohibited by the constitution."

The significant fact is whether the tax "obstructs the free course of a power given to Congress";[94] and considered in that view, it is immaterial whether the tax "works material prejudice to the characteristic features of the general maritime law."[95] Certainly the taxes in the *Moran* and *Harmon* cases, *supra*, had no such effect; nor did the general capital stock tax levied by Pennsylvania and sought unsuccessfully to be applied to a ferry company in *Gloucester Ferry Co. v. Pennsylvania*[96]—yet all were held to be unconstitutional as burdening the exercise of a franchise or right derived from the federal government.

The regulations and tax under the Louisiana act are "with respect to having individuals in his employ,"[97] and

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[94] *Ibid.*, at p. 448.

[95] Puget Sound Stevedoring Co. v. Tax Commission, 302 U. S. 90 (1937); Motor Transit Co. et al. v. Railroad Comm'n. of California, 15 F. Supp. (DC Cal. 1936) 630; Di Santo v. Commonwealth of Pennsylvania, 273 U. S. 34 (1927); Texas Transport & Terminal Co. v. City of New Orleans, 264 U. S. 150 (1924); Clyde SS Co. v. City Council of Charleston, 76 Fed. (CC S C 1896) 46; Crutcher v. Commonwealth of Kentucky, 141 U. S. 47 (1891); Philadelphia & S. M. SS Co. v. Commonwealth of Pennsylvania, 122 U. S. 326 (1887).

[96] 114 U. S. 196 (1885).

[97] Social Security Act, 42 U. S. C. A. 1101. The Louisiana Act says: "with respect to employment." Act 164 of 1938, Sec. 6. See also: Steward Machine Co. v. Davis, 301 U. S. 548 (1937) at p. 574; Carmichael v. Southern Coal & Coke Co., 301 U. S. 495 (1937) at p. 508; Helvering v. Davis, 301 U. S. 619 (1936) at p. 645.

when applied to petitioners' maritime employment, they become a burden and an excise on the privilege of having the officers and crews of plaintiffs' federally enrolled and licensed vessels navigate them on the navigable waters of the United States. All the hair-splitting possible cannot make it otherwise.

If the Louisiana act had imposed a license tax upon petitioners, measured by the wages paid petitioners' maritime employees, it would seem quite clear that the tax would be invalid on the ground that it was an interference with the exercise of petitioners' licenses to engage in the coasting trade. Although the present statute is not drawn exactly along the lines suggested in the foregoing example, the result is actually the same in either case. Petitioners cannot exercise their federal licenses without payment of the tax under the present statute any more than they could without payment of the tax under the suggested statute.

Certainly in licensing these vessels the federal government did not contemplate that they would operate without officers and crews, or that the ability properly to man the vessels should be subject to state regulation and taxation. It would seem that the federal license to engage in the coasting trade includes the privilege of employing the necessary officers and crews to man the licensed vessels without state interference or taxation, as surely as did the same sort of license in *Gibbons v. Ogden, supra,* include the privilege of navigating the Hudson River, and the license in *Hall v. DeCuir, supra,* include the privilege of navigating the Mississippi River, without interference by the State. The having of officers and crews in employ to man vessels is an incident indispensable to the enjoyment of the license granted by the federal government, and as such, it

is not subject to interference by state regulation or by taxation.

This principle is established by the long line of cases holding invalid state taxes imposed on instrumentalities essential to the conduct of an activity beyond the taxing authority of the state. *Cooney vs. Mountain States Telephone & Telegraph Co.*[98] is a recent illustration of this principle. While this series of case deals with state burdens, by taxation, on essential instrumentalities of interstate commerce, the principle is equally applicable to state burdens on essential instrumentalities for the carrying on of maritime activities within the admiralty jurisdiction of the United States; a field equally, if not exclusively, within the sphere of federal control. In the *Cooney* case, the state sought to tax, not the interstate activity of the corporation, but the essential means, the instrumentality, by which such activity was carried on, by levying an excise tax of from $1 to $3 on each of the telephone instruments used by the company in carrying on its business. This Court held that even though the telephone instruments were susceptible of use in intrastate as well as in interstate commerce, the tax was nevertheless void as necessarily burdening interstate commerce. The identical principle is applicable to the taxation attempted here of maritime employment.

As heretofore pointed out, the fact that a tax is nondiscriminatory in its nature, and applies to employment generally throughout the state, does not save it where, as

[98]294 U. S. 384 (1935). See also: State Freight Tax Case, 15 Wall. 232 (1873); Pickard v. Pullman Co., 117 U. S. 34 (1885); Robbins v. Shelby County, 120 U. S. 489 (1887); Philadelphia & So. M. S. S. Co. v. Pennsylvania, 122 U. S. 326 (1887); LeLoup v. Port of Mobile, 127 U. S. 640 (1888); Crutcher v. Kentucky, 141 U. S. 47 (1891); Adams Express Co. v. New York, 232 U. S. 14 (1913); Bowman v. Continental Oil Co., 256 U. S. 642 (1920); Sprout v. Bend, Inc., 277 U. S. 163 (1927); New Jersey Bell Tel. Co. v. State Board, 280 U. S. 338 (1929).

here, the tax is imposed directly upon the thing essential to the conduct of the activity. In *Helson vs. Kentucky*,[99] a state act was held void, as applied to gasoline purchased out of the state, but used in Kentucky to operate an interstate ferry, which imposed a general tax of 3c a gallon on all gasoline used within the state, the Court saying:[100]

> "The tax is exacted as the price of the privilege of using an instrumentality of interstate commerce. It reasonably cannot be distinguished from a tax for using a locomotive or a car employed in such commerce. A tax laid upon the use of the ferryboat would present an exact parallel. And is not the fuel consumed in propelling the boat an instrumentality of commerce no less than the boat itself? *A tax which falls directly upon the use of one of the means by which commerce is carried on directly burdens that commerce. If a tax cannot be laid by a state upon the interstate transportation of the subjects of commerce . . . it is little more than repetition to say that such a tax cannot be laid upon the use of a medium by which such transportation is affected.*" (Emphasis supplied.)

The having of officers and crews in employment is just as essential to the exercise of petitioners' federal licenses in the instant case as was the consumption of fuel in the cited case to the exercise of the right to engage in interstate commerce. In each case there is a state burden on the exercise of a right, privilege or franchise derived from the Federal Constitution, and in neither case can such state burden be sustained.

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[99]279 U. S. 245 (1929). See also: Cases referred to in opinion.
[100]*Ibid.*, at p. 252.

CONGRESS ALONE MAY REGULATE AND TAX MARITIME EMPLOYMENT

A clear distinction has been and must be drawn between the powers of Congress under the Commerce clause of the Constitution on one hand, and under the Admiralty clause, on the other. With respect to commerce, the constitutional grant to Congress is a *regulative* power, restricted to its interstate aspects, plenary when exercised, but, except in matters of national concern, shared with the states in the absence of congressional legislation;[101] while the Admiralty Clause grants both to the judiciary,[102] and to Congress,[103] exclusive authority over "all cases of admiralty and maritime jurisdiction."[104] It is on the basis of these latter constitutional texts that the doctrine of uniformity of the maritime law of the nation early became a part of our law, as distinguished from the principles applicable to interstate commerce, which recognize a proper sphere for the operation of state regulations of a local character.

In *The Lottawanna*[105] this Court stated that "it certainly could not have been the intention to place the rules and limits of maritime law under the disposal of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed . . ." And in *Butler v. Boston & S. SS Co.*[106] this Court, speaking of the

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[101]See New York, N. H. & H. R. v. New York, 165 U. S. 628 (1899).
[102]U. S. Constitution, Art. III, Sec. 2.
[103]U. S. Constitution, Art. I, Sec. 8, Clause 18.
[104]See Knickerbocker Ice Co. v. Stewart, 253 U. S. 149 (1920), at p. 161: *"The distinction between the indicated situation created by the Constitution relative to maritime affairs and the one resulting from the mere grant of power to regulate commerce without more, should not be forgotten."* (Emphasis supplied).
[105]21 Wall. 558 (1874), at p. 575.
[106]130 U. S. 527 (1889), quoted from 9 S. Ct. at p. 619. See also The Roanoke, 189 U. S. 185 (1902), where the Court said at 23 S. Ct. p. 493; ". . . we have several times had occasion to hold that where Congress had dealt with a subject within its exclusive power, *or where such ex-*

respective powers of the national and state legislatures concerning maritime affairs, said that "the power of legislation on the . . . subject must necessarily be in the national legislature, and not in the state legislatures."

This doctrine of uniformity, and of the exclusiveness of congressional authority with respect to maritime affairs, has never been departed from,[107] when this Court has been called upon to consider state legislation regulative of, or burdening, maritime affairs.[108]

The reception into admiralty of local laws and customs not hostile to the characteristic features of maritime law[109] is entirely consistent with this doctrine of uniformity, and, indeed, is dictated by the implications of *Erie R. v. Tompkins*.[110] As observed by this Court recently in *Just v. Chambers*:[111]

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clusive power is given to the Federal courts, as in case of admiralty and maritime jurisdiction, it is not competent for states to invade that domain of legislation, and enact laws which in any way trench upon the power of the Federal Government." (Emphasis added).

[107]See Panama R. Co. v. Johnson, 264 U. S. 375 (1924), and cases collected therein at p. 387; Parker v. Motor Boat Sales, Inc., 314 U. S. 244 (1941) at p. 248, *seq.*

[108]In many instances state statutes regulating maritime affairs have been attacked in this Court only on the ground that such statutes violated the Commerce clause of the Constitution. In such cases the Court, applying the familiar rule of deciding only issues properly raised and presented (*Cf.* McGoldrick v. Compagnie Generale Transatlantique, 309 U. S. 430 (1940); O'Donnell v. Great Lakes Dredge & Dock Co., Oct. Term, 1940, No. 320, decided Feb. 1, 1943.), decided such cases purely upon the principles of interstate commerce, and without reference to the Admiralty Clause of the Constitution. Thus in Cooley v. Board of Wardens, 12 How. 299 (1851), the Court specifically said: "To these precise questions, which are all we are called on to decide, this opinion must be understood to be confined." Other cases decided under the Commerce Clause include the ferry cases (Conway v. Taylor's Ex'r., 1 Black 603 (1862); Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196 (1885); City of Sault Ste. Marie v. International Transit Co., 234 U. S. 333 (1914); Port Richmond & Bergen's Point Ferry Co. v. Board of Chosen Freeholders of Hudson County, 234 U. S. 317 (19143. Also see Kelly v. Washington, 302 U. S. 1 (1937).

[109]Western Fuel Co. v. Garcia, 257 U. S. 233 (1921); The Lottawanna, 21 Wall. 558 (1874).

[110]304 U. S. 64 (1938).

[111]312 U. S. 383 (1941) at p. 390.

> "... the maritime law was not a complete and perfect system and ... in all maritime countries there is a considerable body of municipal law that underlies the maritime law as the basis of its administration."

Every instance in which local law has been received into the Admiralty, however, has been with respect to the recognition of substantive rights of individuals, such as those concerning maritime torts,[112] liens,[113] survivorship,[114] and the like.[115] Uniformly, in the absence of a congressional invitation for state legislation,[116] where the state has attempted to impose regulations on maritime affairs, either

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[112]Western Fuel Co. v. Garcia, *supra*, note 3. The "local concern" doctrine in cases of torts occurring on navigable waters in no way affects the principle of uniformity. These cases simply hold, in effect, on the basis of the particular fact situations present, that the nature of the employment, being strictly local, rather than the mere fact that the injury happened to occur on navigable waters, is determinative of the type of relief afforded. See Davis v. Department of Labor & Industries, 63 S. Ct. 225 (1942). Hence, contrariwise, in the converse situation, where a maritime worker is injured ashore, he, as a mariner, may recover under the maritime law. See O'Donnell v. Great Lakes Dredge & Dock Co., Oct. Term, 1942, No. 320, decided Feb. 1, 1943; Aguilar v. Standard Oil Co., Oct. Term, 1942, No. 454, decided April 19, 1943; Waterman Steamship Corp. v. Jones, Oct. Term, 1942, No. 582, decided April 19, 1943.

[113]The Lottamanna, *supra*, note 105.

[114]Just v. Chambers, *supra*, note 111.

[115]See Red Cross Line v. Atlantic Fruit Co., 264 U. S. 109 (1924).

[116]Such an invitation was expressly given by Congress with respect to pilotage. See Act of August 7, 1789, 1 Stat. 54, 46 U. S. C. A. § 211; Cooley v. Board of Wardens, *op. cit. supra*, note 108. It is implied by immemorial custom with respect to state legislation both of ferriage (See Port Richmond & Bergen Point Ferry Co. v. Hudson County, 234 U. S. 317 (1914)), and of pilotage. In the Cooley case, the Court said: "... it may be observed, that similar laws have existed ... in the States since the adoption of the federal Constitution; that by the Act of the 7th of August, 1789, 1 Stat. at Large, 54, Congress declared that all pilots ... shall continue to be regulated in conformity with the existing laws of the States, etc., and that this contemporaneous construction of the Constitution since acted on with such uniformity in a matter of much public interest and importanace, is entitled to great weight, in determining whether such a law is repugnant to the Constitution ..." Moreover, the Court, in effect, found from the history of congressional legislation such an invitation for state legislation requiring the inspection of small, otherwise uninspected boats. Kelly v. Washington, 302 U. S. 1 (1937). *Contra*, Knickerbocker Ice Co. v. Stewart, 253 U. S. 149 (1920).

by tax,[117] or otherwise,[118] this Court has held such state action to be unconstitutional.[119] The doctrine has specifically been held to prohibit local regulation of maritime employment.[120]

In the quite similar[121] case of *Washington v. Dawson*,[122] where the only question involved was whether defendant stevedoring firm could "be compelled to contribute to the accident fund provided by the Workmen's Compensation Act of Washington"—that is, whether defendant's maritime employment was subjected to a forced state contribution for the privilege of employment within the state—this Court held the tax unconstitutional as violating the principle of uniformity required of things maritime. The

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[117]Moran v. New Orleans, 112 U. S. 69 (1884); Harmon v. Chicago, 147 U. S. 396 (1893); Washington v. Dawson, 264 U. S. 219 (1924).

[118]Gibbons v. Ogden, 9 Wheat. 1 (1824); Hall v. deCuir, 95 U. S. 485 (1878).

[119]Supra, notes 117 and 118.

[120]United Dredging Co. v. City of Los Angeles, 10 F. (2d) 239 (D. C. Calif., 1926), aff'd., 14 F. (2d) 864 (CCA 9-1926); *Cf.*, Parker v. Motor Boat Sales, Inc., 314 U. S. 244 (1941).

[121]The analogy between state unemployment compensation and state workmen's compensation acts in their philosophy, operation and effect, is immediate and direct. Both are products of machine age mass production methods, and are "social legislation" designed to shift onto industry a fair share of the cost to the individual of inevitable economic loss consequent on industrial operations, due either to accident or death, in the one case, or to cyclical unemployment in the other. Both schemes work on an "insurance" principle, and are financed by forced "contributions" of a percentage of the payroll, imposed by the state. Both are usually administered by state administrative agencies with broad regulatory powers over the employer. In both cases the employee is given rights, not so much against the employer who participates, but directly against the fund created to compensate the employee for his loss, either of life, limb, or of his job. In both cases, the proceeding to determine whether, or to what extent, the employee should share in the fund is carried on in an adversary manner with the employer, who, in both cases, is adversely affected by recoveries from the fund because of increased contribution rates he must pay on the insurance principle. In both cases, this results in an incentive to the employer to reduce or to eliminate the cause of the increase—in the one case, industrial accidents; in the other, unemployment. See 4 Fordham L. Rev. 485, 492. A similar analogy has been drawn between the Federal Employers' Liability Act and the Fair Labor Standards Act. See Overstreet v. North Shore Corp., 63 S. Ct. 494 (1943).

[122]264 U. S. 219 (1924).

application of this principle to the regulations and tax imposed on maritime employment by the Louisiana Unemployment Compensation Act requires a similar declaration of unconstitutionality in the instant case.

The cases cited by the Court below are not in point. *Cornell Steamboat Co. v. Sohmer*,[122] simply upheld a state corporation franchise tax applied against a corporation of its own creation engaged in navigation.[124] *Huse v. Glover*,[125] and *Sands v. Manistee River Impr. Co.*,[126] merely approved state authorized charges for the use of state constructed maritime facilities and improvements to navigation—situations not present here. In the *Old Dominion* case[127] the Court, on well-recognized principle, approved a state personal property tax assessed against vessels permanently located within the state.

But none of these cases approved the imposition, as is here present, of state regulations and taxes on a maritime relationship (i. e., the hiring of crews in employment) essential to the exercise of a maritime activity duly licensed by Congress.

While it is insisted that the principles[127a] developed by this Court for the solution of problems presented under the

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[122]235 U. S. 549 (1915).

[124]There the Court specifically pointed out: ". . . the tax . . . is levied upon the corporation for the privilege of carrying on its business in a corporate or organized capacity . . . if the parties . . . are dissatisfied with the price exacted by the state for this privilege, they may carry on the business as individuals without paying any charge. In other words, the charge is not upon the navigation of the river, but is upon the doing of business as a corporation of the state within the state."

[125]119 U. S. 543 (1886).

[126]123 U. S. 288 (1887).

[127]Old Dominion S. S. Co. v. Virginia, 198 U. S. 299 (1905).

[127a]See Graves v. New York, 306 U. S. 466 (1939) at p. 479, footnote 1: "The failure of Congress to regulate interstate commerce has generally been taken to signify a Congressional purpose to leave undisturbed the authority of the states to make regulations affecting the

commerce clause of the Constitution are inapplicable to maritime affairs, yet even were such principles applied to the instant attempted state regulation and taxation of maritime employment, the result would be the same. The matter here is not one of "peculiarly local concern." The vessels involved in this case cross and recross state lines. They operate in various states, sometimes in foreign countries, and when working along water-boundaries, frequently cross and recross state lines in the course of their operations.

Navigation, particularly of registered and documented vessels, is peculiarly national in its character,[128] and hence, a field within which, under well-recognized principles, even "inaction[129] (by Congress) . . . is equivalent to a declaration that . . . (it) shall remain free and untrammeled."[130]

Moreover, this Court has specifically held that maritime employment is a matter of national concern with which state laws may not interfere.[131] In *Employers' Liability Assurance Corp. v. Cook*,[132] this Court held that "The unloading of a ship is not a matter of purely local concern, as we have often pointed out."

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commerce in matters of peculiarly local concern, but to withhold from them authority to make regulations affecting those phases of it which, because of the need of a national uniformity, demand that their regulation, if any, be prescribed by a single authority."

[128]See Butler v. Boston & S. S. S. Co., *op. cit. supra* note 106; Panama R. Co. v. Johnson, *op. cit. supra*, note 107.

[129]As will be developed in complete detail below (see *infra*, p. 36, *seq.* 41). Congress has actually acted in the instant situation in a way that precludes state interference.

[130]See Hall v. deCuir, 95 U. S. 485 (1878) at p. 490, quoting from Welton v. Missouri, 91 U. S. 282 (1876). Compare, Fisher's Blend Station, Inc. v. Tax Commission, 297 U. S. 650 (1936).

[131]See Great Lakes Dredge & Dock Co. v. Kierejewski, 261 U. S. 479 (1923); Gonsalves v. Morse Dry Dock & Repair Co., 266 U. S. 171 (1924); Robins Dry Dock & Repair Co. v. Dahl, 266 U. S. 449 (1925); Messel v. Foundation Co., 274 U. S. 427 (1927). Compare, Aguilar v. Standard Oil Co. 85, Nos. 454, 582, October Term decided April 19, 1943.

[132]281 U. S. 233 (1930), at p. 326. See also Northern Coal & Dock Co. v. Strand, 278 U. S. 142 (1928); John Bailey Iron Wks. v. Span, 281 U. S. 222 (1930).

Since employment in shiploading is not a matter of purely local concern, subject to state regulations, certainly employment aboard petitioners' vessels in navigating those vessels is not a matter of purely local concern, and, accordingly, in any event, the latter also is beyond the scope of local state legislation and regulation.

Consistently with the above authorities, this Court, in a unanimous opinion delivered by Mr. Justice Cardozo, has denied state authority to tax the business of stevedoring because of the nature of the employment involved therein,[133] even though the employment was completely performed within the limits of the state assessing the tax.

It is submitted that regulation and taxation of the instant employment is exclusively within the power of Congress. This is so, first, because it is a matter of requiring uniformity; and, second, it is a subject of national, rather than of purely local, concern. Hence, the state act cannot be applied to it.

CONGRESS HAS PREEMPTED THE FIELD[134]

Seamen are wards of the Admiralty Courts,[135] and not of the State Unemployment Compensation Commissioners. In a recent case this Court said:[136]

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[133]Puget Sound Stevedoring Co. v. Tax Commission, 302 U. S. 90 (1937).

[134]". . . where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its application." Cloverleaf Butter Co. v. Patterson, 315 U. S. 148, 156 (1942).

[135]Lawson v. The James H. Shrigley, 50 Fed. 287 (1892), where the court pointed out that seamen "are regarded as the wards of the Court, and every shield and safeguard which the law can give is thrown around them, both by legislative enactment and judicial decision.

[136]See Southern S. S. Co. v. N. L. R. B., 316 U. S. 31 (1942) at p. 39.

> ". . . workers at sea have been the beneficiaries of extraordinary legislative solicitude, undoubtedly prompted by the limits upon their ability to help themselves. The statutes of the United States contain elaborate requirements with respect to such matters as their medicines, clothing, heat, hours and watches, wages and return transportation to this country if destitute abroad."

The Court could have added that federal statutes make the following provisions with respect to unemployed seamen: They are provided hospitalization at the expense of the United States.[137] A special federal fund is created for the relief of sick and disabled seamen,[138] and other federal statutes provide for their care.[139] The benefits of the Federal Old Age Pension were extended to seamen on January 1, 1940.[140] Seamen who become unemployed before the termination of their contract by reason of the loss or wreck of the vessel are entitled, not only to their wages, but to maintenance and transportation back to their port of shipment, whether stranded abroad,[141] or in a domestic port.[142] The Senate has given its advice and approval to the Treaty covering the liability of shipowners in case of sickness, injury or death of seamen, containing elaborate provisions for the care and compensation of seamen unemployed for such reasons.[143] The Senate is still considering the Draft Convention Concerning Sickness Insurance for Seamen,[144]

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[137] 24 U.S.C.A. 26, 26a.
[138] 24 U.S.C.A. 26a; 24 U.S.C.A. 2.
[139] 42 U.S.C.A. 6.
[140] 42 U.S.C.A. 409 (b)(A),(B).
[141] 46 U.S.C.A. 678, *seq.*
[142] 46 U.S.C.A. 593.
[143] See Convention # 55, International Labor Conference, 21st Session, Geneva, 1936, reported, 1938 A. M. C., Vol. 2, p. 1297.
[144] See Convention # 56, International Labor Conference, 21st Session, Geneva, 1936, reported, 1938, A. M. C., Vol. 2, p. 1322.

and will no doubt be called upon to consider the Convention Concerning Unemployment in Consequence of Shipwreck.[145]

The foregoing is but a minor portion of the federal regulations with respect to employment of seamen. Thus, federal statutes regulate their wages, hours, clothing, food, medical care and labor relations.[146] There are statutes regarding the care of the effects of deceased seamen.[147] Other statutes prevent the shanghaiing of seamen.[148] In 1936, statutes were passed governing all maritime labor relations,[149] and creating the "Maritime Labor Board,"[150] specifically charged to report "a comprehensive plan for the establishment of a permanent Federal policy for . . . the stabilization of maritime labor relations."[151] This Act was extended another year by an amendment of June 23, 1941,[152] and on December 19, 1941, the President created the Maritime (Labor) War Emergency Board to handle all matters between sea-going personnel and operators of American merchant ships.[153] Decision No. 5 thereof, provides for the payment of salaries of seamen while interned in a foreign country, or whose ships are lost, due to enemy action, pending return to the United States.[154]

Indeed, Congress considered the entire question of unemployment compensation for maritime workers at the time the Social Security Act was under advisement,[155] and

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[145]Series #8, International Labor Conference, Genoa, 1920, reported, 1938 A. M. C., Vol. 2, p. 1322.

[146]See the innumerable detailed provisions of 46 U. S. C. A., Chap. 18, as well as the Fair Labor Standards Act and the National Labor Relations Act.

[147]46 U. S. C. A. 621-628.

[148]18 U. S. C. A. 144.

[149]46 U. S. C. A. 1251, seq.

[150]*Id.*, 1257.

[151]*Id.*, 1260.

[152]See 1942 A. M. C. 151.

[153]See 1942 A. M. C. 308, seq.

[154]*Ibid.*, p. 311.

[155]See discussion by Mr. Murray W. Latimer, Chairman, Railroad Re-

expressly excluded such workers from the social security system by defining "Employment" in Title IX thereof as follows:[156]

> "The term 'employment' means any service of whatever nature performed within the United States by an employee for his employer, except:
>
> > "(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States."

Since that time, Congress has had under consideration, and has held extensive hearings on, at least two bills to establish a national system of unemployment compensation for maritime workers.[157]

In view of the foregoing federal bills, statutes, treaties and multilateral conventions affecting unemployed maritime workers, can it be said that the various states are competent to inject inconsistent and conflicting local provisions concerning unemployed seamen, and regulating employment so as to reduce maritime unemployment? And what is the effect of such conflicting provisions? To take just one obvious example, let us assume that forty deck hands signed on the dredge "Lake Fithian" in New York for eighteen months. The dredge then came to Louisiana, where she became shipwrecked within the period. To what are the forty deck hands entitled—maintenance and transportation back to New York—or Louisiana un-

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tirement Board, on H. R. 9798; Hearings before Committee on Merchant Marine and Fisheries, 76th Cong., 3d Sess., (1940) p. 2.

[156]42 U. S. C. A. § 1107(c) (3).

[157]See H. R. 9798 (76th Cong., 3d Sess.) and Hearings, *loc. cit. supra* note 155, and H. R. 5446 (77th Cong., 1st Sess.) and Hearings before Committee on Merchant Marine and Fisheries, 77th Cong., 1st Sess. (1941), on H. R. 5446.

employment compensation—or both? And if both, what is there to indicate that Congress meant to subject the shipowner to the regulation and expense incident both to maintenance and transportation, and to the state unemployment compensation system?

The federal statutes, moreover, prescribe minutely the nature and form of employment records to be kept with regard to seamen. Depending upon the type of trade in which the vessel is engaged,[158] shipping articles in a form prescribed by Congress may be executed before a shipping commissioner,[159] setting forth in detail the terms of the employment. The sale of deceased seamens' effects must be entered in the official log book by the master, and attested by the mate or one of the crew, along with a statement of the sum due the deceased as wages and the total amount of deductions.[160] Such entries must be exhibited to the shipping commissioner, who, in proper cases, issues his certificate.[161]

The statutes further provide that all wage-payments and advances shall be entered by the master in the official log book, and that an account shall be delivered to the seaman forty-eight hours before he is paid off or discharged.[162] Elaborate provision is made for mutual releases, executed before a commissioner,[163] and the discharge must be signed by the master in a form prescribed by Congress,[164] and must include "a report of the conduct, character, and qualifications of the persons discharged;

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[158] As to foreign trade, see 46 U. S. C. A. 564; as to coasting, *Ibid.*, 574.

[159] 46 U. S. C. A. 563, 564, 574. As to form, see, *id.*, 565, 713. These provisions do not apply to vessels under 50 tons burden.

[160] 46 U. S. C. A. 621.

[161] 46 U. S. C. A. 622.

[162] 46 U. S. C. A. 642, 563, 596.

[163] 46 U. S. C. A. 644.

[164] *Id.*, 713, Table "B".

or may state in such form, that he declines to give any opinion upon such particulars, or upon any of them . . ."[165]

In view of the specific, detailed and comprehensive nature of the employment records required to be kept by the federal statutes, can it possibly be said that Congress has left room for Louisiana to authorize its Unemployment Compensation Commissioner, to require of maritime employers that:[166]

> "Each employing unit shall keep true and accurate records, containing such information as the Commissioner may prescribe . . . The Commissioner or authorized representative may require from any employing unit any sworn or unsworn reports which he deems necessary for the effective administration of this Act."

Clearly, Congress has preempted the field, both of maritime employment regulation and of maritime employment records and the conflicting provisions of the Louisiana act must fall.[167]

CONGRESS HAS EXPRESSLY INDICATED THAT UNEMPLOYMENT COMPENSATION FOR MARITIME WORKERS IS A SUBJECT OF NATIONAL AND NOT OF STATE CONCERN

When Congress indicates a policy with respect to a matter over which it has plenary authority, such policy will be enforced.[168]

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[165]*Id.*, 645. The Shipping Commissioner retains a copy of the discharge. And see section 646.

[166]La. Unemployment Compensation Act, Sec. 10(g).

[167]Cloverleaf Butter Co. v. Patterson, 315 U. S. 148 (1942).

[168]"The question remains, whether the present tax conflicts with the Congressional policy adopted by the Acts of Congress which we have discussed." McGoldrick v. Gulf Oil Co., 309 U. S. 414, 428 (1940).

The Louisiana act is merely a part of the comprehensive plan of social security legislation sponsored by the federal government; and indeed, except for such sponsorship, state unemployment compensation is not feasible.[169] Hence, it is to the federal plan that we must look primarily to determine the rôle both of the federal and of the state governments in the social security system.[170] As said recently by this Court in the *Buckstaff Bath House* case:[171]

> "The (Social Security) Act was designed therefore to operate in a dual fashion—state laws were to be integrated with the Federal Act; payments under the state law could be credited against liabilities under the other. That it was designed so as to bring the states into the cooperative venture is clear . . . there were great practical inducements for the states to become components of a *unitary plan for unemployment relief*. . . . it would seem to be a fair presumption that the purpose of Congress was to have the state law as closely coterminus as possible with its own.
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> " . . . Thus, the exclusion of federal instrumentalities from the scope of the Federal Act, *and hence from the complementary state systems*, emphasizes the purpose to exclude from this statutory system only that well defined and well known class of employers who have long enjoyed immunity from state taxation. Had it been desired to exempt the equally well known class, of which petitioner is a member, *so as to save it from*

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[169]Unemployment Compensation, What and Why? (Social Security Board, 1937), p. 24, *seq.*

[170]*Ibid.*, p. 25.

[171]Buckstaff Bath House Co. vs. McKinley, 308 U. S. 358 (1939) at p. 363.

> *reciprocal state systems*, it would seem that an equally clear exception would have been made." (Emphasis supplied.)

The prohibition against a state coverage of maritime employment was recognized by practically all of the states in the adoption of their respective statutes. These statutes, with few exceptions, contain the identical exclusion with respect to officers and members of crews as does the federal act.

Perhaps the most important thing to remember in this connection is that the social security system is tentative, still experimental, and does not purport either itself to cover, or to authorize the states to cover, the entire field with respect to unemployment compensation. As stated in the President's first Message to Congress submitting the Social Security Plan, and as reiterated by him in his Message in 1939,[172] transmitting a Report of the Social Security Board to Congress, recommending changes in the Social Security Act:

> "It is overwhelmingly important to avoid any danger of permanently discrediting the sound and necessary policy of Federal legislation for economic security by attempting to apply it on too ambitious a scale before actual experience has provided guidance for the permanently safe direction of such efforts. The place of such a fundamental in our future civilization is too precious to be jeopardized now by extravagant action."

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[172]See Message from the President of the United States transmitting a Report of the Social Security Board Recommending Changes in the Social Security Act, Document #110, 76th Cong., 1st Sess. (1939) p. 3.

Having determined on local, rather than on federal, administration of the unemployment compensation aspect of social security, it was not necessary that specific authorization be given by Congress to the states to put some of the program into effect. The states already possessed the requisite police and tax power to effectuate a large part of the program. However, Congress recognized that there were important phases of our economic life beyond the reach of the state police and taxing authority. To mention but a few: employment in interstate commerce; employment by the federal government itself, or by federal agencies, instrumentalities, corporations and authorities; employment on federal property, and by national banks and other federally chartered corporations; employment in foreign embassies and consulates; and finally, employment within the admiralty and maritime jurisdiction of the United States.

It is important to note that in only one of the above phases of employment did Congress originally authorize state interference, and then only to a limited extent. With respect to employment in interstate commerce, the Congress expressly provided in the original Social Security Act:[173]

> "No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce."

Both the language of, and the omissions from, the above provision are most significant. Couched in the nega-

[173] 42 U. S. C. A. 1106.

tive, it simply takes away the immunity of employment, affecting interstate commerce, from the application of state unemployment compensation laws. Congress obviously assumed that but for this provision, its plenary authority with respect to the regulation of interstate commerce would prevent state unemployment compensation from being applicable to such employment.

Moreover, Congress was not even willing to go so far as to grant the states authority to make unemployment compensation legislation applicable to all interstate commerce. Hence, a governmental instrumentality engaged in interstate commerce was not, by the above section, subjected to state unemployment compensation legislation. Similarly, a federally chartered corporation or national bank engaged in interstate commerce, though prevented from resisting the application to it of state unemployment compensation legislation on the ground of interstate commerce, could nevertheless oppose application of such laws to it as not being subject to state regulation.

And so with maritime employment—the very fact that Congress authorized state interference with interstate commerce employment, and expressly withheld authorization to the states to interfere with maritime employment, is adequate demonstration that Congress, not by silence, but by positive action, asserted its plenary authority with respect to admiralty and maritime jurisdiction.

This conclusion is strengthened by the fact that, since 1935, Congress, while withdrawing railroads from state control,[174] has conferred authority on the states to apply their unemployment compensation laws to the following

[174] 45 U. S. C. A. 363(a).

types of employment within the plenary power of Congress:[175] (1) instrumentalities of the United States (except those wholly owned or otherwise exempt); (2) national banks; and (3) persons employed on land or premises owned, held or possessed by the United States. In each instance, the grant of such authority was carefully safeguarded and qualified. But never has Congress surrendered its plenary authority over maritime employment! Indeed, the very Social Security Borad which recommended to Congress the surrender of its complete authority over the types of employments listed above,[176] at the same time, recommended that Congress not authorize state interference with maritime employment.

The considerations moving the Social Security Board to recommend, and the Congress to accept such recommendations, that maritime employment not be included in the Social Security Act, or authorized to be included by the States, were many and important. In the first place, both the Board and the Ways & Means Committee considered the constitutional obstacles insurmountable.[177] Moreover, there were important considerations of propriety,[178] expediency[179] and uncertainty.[180] As above pointed out, the

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[175]See 26 U. S. C. A. 1606.

[176]See Report, *op. cit. supra*, note 172, p. 19. See also, Hearings on Social Security Act Amendments, 1939, before House Committee on Ways and Means (76th Cong., 1st Sess.) pp. 11, 14.

[177]*Ibid.*, Report, p. 16, Hearings, pp. 12, 65. See also *Id.*, pp. 1413, 1426, 1450 *seq.*, 2325, 2327, 2471.

[178]See Hearings on Social Security Act Amendments, 1939, pp. 2471, 2488, *seq.*; Hearings on H. R. 5446, *op. cit. supra*, note 157, pp. 198, 199.

[179]For instance, the members of the House Committee on Ways and Means seem to have been definitely of the opinion that a bill, either to include maritime workers in the Social Security plan, or to provide a separate system for them, should originate in the House Committee on the Merchant Marine and Fisheries, rather than in the Committee on Ways and Means. See Hearings relative to the Social Security Act Amendments, 1939, *op. cit. supra*, note 176, pp. 1423-1424 1428 2326. Such a bill was subsequently introduced and referred to the House Committee on the Merchant Marine and Fisheries. See *supra*, note 157.

[180]See references, *infra*, note 181.

President himself had warned against "extravagant action." The Hearings on the Social Security Bill are replete with the complaints of the experts that they were without sufficient information, without statistics, and without sufficient opportunity to study, the practices, habits and problems of maritime employment.[181]

In this respect, the federal government stands in a very delicate relation to the states in its responsibility for the administration of the joint aspects of the social security plan. As sponsor, the national government must assume responsibility for its proper operation, for guidance of the states, and for not permitting the states to jeopardize the solvency of their funds by "extravagant action;" for insolvency would obviously completely discredit the entire system. This was certainly one of the considerations inducing the Congress not to authorize the States to extend their unemployment compensation systems to include maritime unemployment.

Under state plans, including Louisiana's, unemployment compensation is payable, ordinarily, after a waiting period of only two weeks, and the waiting period can never be extended beyond nine weeks, even if the recipient is discharged for cause.[182] At committee Hearings it was developed, however, that (except in wartime) maritime unemployment ran between 15 and 35 per cent.[183] It further

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[181]See Hearings on Social Security Act Amendments, 1939, *op. cit. supra*, note 176; Testimony of Mr. George E. Bigge, Commissioner, Social Security Board, p. 2490. Hearings on H. R. 5446, *op. cit. supra*, note 157; Testimony of Mr. Murray W. Latimer, Chairman, Railroad Retirement Board, pp. 5, 21.

[182]La. Act 164 of 1938, Sec. 4, *infra* appendix D, p. 61.

[183]See Testimony of Mr. George E. Bigge, *op. cit. supra*, note 181, at p. 2488; also testimony of Mr. Latimer, *op. cit. supra*, note 181 at p. 22, *passim*.

developed that the custom in maritime employment to hire through "hiring halls" would place an exhorbitant drain on compensation reserves. With reference to the effect of this custom on unemployment compensation, Mr. George E. Bigge, Commissioner, Social Security Board, an expert on maritime employment, testified:[184]

> "If a seaman becomes unemployed . . .he files his card at the hiring hall . . . His name is put at the bottom of the list of those who have indicated that they want jobs, and he must wait his turn until his name comes to the top of the list. . . . It means . . . that they would all . . . probably qualify for benefits when again they become unemployed.
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> "This same rotational system means that most of those who do become unemployed are unemployed for a long enough time so that they would draw benefits. They have to wait their turn until others have had a chance to get jobs. As a result the unemployment that does exist in the industry will probably place a larger drain upon the fund than the same total unemployment would in most other industries, because much of the unemployment in other industries would not be compensated; first, because some of the people would never be eligible; second, because some of the people would draw the benefits as long as they are eligible, and then still be unemployed because they could not get a job, and they would not be compensated for this second part of their period of unemployment.
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> "So the economic characteristics of the industry are such that it does present rather serious

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[184] *Op. cit. supra*, note 181, at p. 2488-2489.

> problems from the point of view of unemployment compensation . . . Those are the economic characteristics that, I think, need to be taken into account in setting up any kind of unemployment insurance program for this industry."

These economic characteristics were fully taken into account by the House Committee on the Merchant Marine and Fisheries, in considering H. R. 5446 which creates an unemployment compensation system for maritime workers. This bill places a 6 per cent tax instead of the present 3 per cent tax which applies to other industries.[185] This increase is in part justified by the fact that the maritime industry has not yet been called upon to contribute unemployment compensation taxes.[186] The bill contains many other deviations from the Social Security Act made necessary by the difference in the nature of maritime employment practices, and applicable federal regulations.[187]

The importance of this for present purposes is that it shows clearly that Congress carefully considered the problem of extending coverage to maritime employment, and after such careful consideration, expressly refused to do so.

In its Report to the House Committee on the Merchant Marine & Fisheries, the Social Security Board warned against attempting to grant authority over maritime employment to the states. The Board said:[188]

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[185]H. R. 5446, *op. cit. supra*, note 157, Sec. 8(b).

[186]See Testimony, Mr. Latimer, *op. cit. supra*, note 200, at pp. 15, 17.

[187]See, generally, H. R. 5446, and Memorandum submitted by Mr. Altmeyer, Chairman, Social Security Board, on "Questions to be Settled in Placing Seamen Under Social Security Act," *op. cit. supra*, note 176, at pp. 2471, 2472.

[188]See Hearings, *op. cit. supra*, note 157, p. 198. For the weight to be given such administrative determinations, see Davis v. Department of Labor & Industries, 63 S. Ct. 225 (1942).

"Under the Constitution it is impossible to confer upon the States jurisdiction over maritime employment to the extent necessary to meet the needs of unemployment compensation. Therefore, *in order to afford such protection to seamen, it would be necessary to pass a Federal act.* The Board recommends that such an act be passed covering all maritime employment which it is not possible or practicable to bring under state laws . . ." (Emphasis supplied.)

* * *

The Board also said:[188a]

" . . . But more important than this fact is the fact that any allocation of services among several unemployment compensation systems automatically makes it more difficult for an individual to qualify for benefits and may result in the loss of some or all of the individual's benefit rights. H. R. 5446 contains . . . authority to the Railroad Retirement Board to minimize these possibilities but it must be noted that in order to do so effectively arrangements must be made with 51 separate State agencies and appropriate authority must be obtained from the legislature of 51 jurisdictions."

Obviously in addition to constitutional prohibitions, one of the reasons for refusing so to authorize the states to enter the field of maritime unemployment was the fear of jeopardizing the solvency of the entire Social Security System by authorizing such a substantial drain, the full extent of which is not even known, on state resources, which are supported normally by a pay roll tax of only 2.7

[188a] *Op. cit. supra*, note 188.

per cent, as against the 6 per cent tax recommended by the experts as necessary to support unemployment compensation in the maritime industry.

As heretofore pointed out, Congress has indicated by positive action that maritime employment is not a proper subject for the application of state unemployment compensation legislation by exempting from the definition of "employment" in Title IX of the Social Security Act[189]

> "services performed as an officer or member of the crew of a vessel on the navigable waters of the United States."

The district court dismissed this obvious expression of Congressional intent by saying:

> "nor can it be reasonably contended that the state legislator was held to a punctilious setting of foot nowhere but in the tracks of Congress . . ." (R. 44)

But this misses the point of the exception, ignores the *Buckstaff Bath House* case,[190] and fails to explain why, in Title II of the same Social Security Act, where *Federal* as opposed to *State*, administration of the "Old Age and Survivors Insurance Benefits" plan is contemplated, the same term—"employment"—is defined so as to *include:*

> ". . . service performed . . . on or in connection with an American vessel."

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[189] 42 U. S. C. A. 1107(c) (3); Parker v. Motor Boat Sales, Inc., 314 U. S. 244 (1941). See also: 26 U. S. C. A. 1607(c) (4).

[190] *Loc. cit. supra*, note 136.

It is obvious that Congress included seamen under the Old Age provisions of the Act because that is federally administered, and excluded them under the other because it is state administered.

The Circuit Court relied upon the badly reasoned opinions of two state courts as authority for its decision on this question. In the New York case,[191] presently on appeal to this Court,[192] the Court interpreted the provision of the Federal Social Security Act permitting extension of state unemployment compensation legislation to interstate commerce to authorize like extension to admiralty matters,[193] an entirely inadmissible extension of the provision, in no way warranted by a history of the Act, as pointed out above.

The New Jersey case involved employment exclusively within the territorial limits of New Jersey, in small surf boats, "more properly within the category of local fishermen and not members of a crew."[194] In the instant case, as stipulated, the vessels frequently, though not customarily between ports, operate outside Louisiana, across the boundaries thereof, and in foreign countries, and employment thereon is indisputably maritime in nature.

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[191]Claim of Cassaretakis, 289 N. Y. 119, 44 N. E. (2d) 391 (1942).

[192]No. 813.

[193]The Court said (44 N. E. (2d) at p. 395): ". . . by section 1606(a) of the Federal Tax Act, 26 U. S. C. A. Int. Rev. Code, Sec. 1606(a), the Congress has declared that state unemployment insurance laws may be applied to interstate commerce. And in Perkins v. Pennsylvania, 314 U. S. 586, affirming 342 Pa. 529, 21 A. 2d 45, the Supreme Court has held that there is no constitutional obstacle under the commerce clause to the application of the Pennsylvania Unemployment Insurance Law, 43 P. S. Sec. 751 *et seq.*, to those employed in interstate commerce. This would seem to be a conclusive determination that unemployment among those engaged in interstate commerce in general is a matter of local concern as to which no uniform national legislation is needed and in which field, therefore, the states may constitutionally legislate."

[194]Shore Fishery, Inc. v. Board of Review, 127 N. J. L. 87, 21 Atl. (2d) 634 (1941) at p. 637.

Not only has the Congress completely occupied the field of the regulation both of maritime employment and of maritime unemployment to such an extent as to make impossible inconsistent state legislation, but the Congress has expressly declared that the field of maritime unemployment compensation is one which, in the exercise of its plenary power, Congress has reserved to itself, and withheld from the states.

CONCLUSION

It is respectfully submitted:

1. That the dredges and appurtenant craft involved are "vessels" and the employees thereof are "officers and members of the crews," within the admiralty and maritime jurisdictions of the United States;

2. That the state statute, when sought to be applied to such maritime employment, is essentially state regulation and taxation, of essential incidents of the exercise of petitioners licenses granted by the United States to engage in the coasting trade;

3. That the state statute, in purpose and in effect, is a comprehensive system of employment regulation of which the tax feature is an integral part, and that, as such, when sought to be applied to the instant maritime employment, it invades a field in which Congress has exclusive jurisdiction;

4. That Congress expressly and by necessary implication has excluded state unemployment compensation legislation and taxation with regard to maritime employment,

as much because of constitutional limitations on state interference in admiralty and maritime matters as in the interest of protecting state unemployment compensation funds from possible insolvency as a result of exhorbitant drains on reserves in paying benefits for maritime unemployment; and

5. That, accordingly, the Louisiana Unemployment Compensation Act, in so far as it seeks to include within the term "employment," services performed by petitioners' maritime employees while operating petitioners' vessels on the navigable waters of the United States within the State of Louisiana, is unconstitutional, null and void, and petitioners are entitled to the declaratory relief prayed for.

Respectfully submitted,

R. EMMETT KERRIGAN,
JAMES J. MORRISON,
Attorneys for Appellants.

DEUTSCH, KERRIGAN & STILES
RYAN, CONDON & LIVINGSTON,
Of Counsel.

APPENDIX A

TREASURY DEPARTMENT
WASHINGTON

Office of
Commissioner of Internal Revenue

Address Reply to
Commissioner of Internal Revenue
and refer to
IT:RR
RFW

JAN 9 1937

Standard Dredging Company,
80 Broad Street,
New York, New York.

Sirs:

Reference is made to your letter of November 23, 1936, transmitting copies of Bureau letters dated August 21, 1936 and October 22, 1936, adressed to Mr. Clarence W. DeKnight, Hibb Building, Washington, D. C., and to The National Association of River and Harbor Contractors, 15 Park Row, New York, New York, and requesting further consideration of Bureau ruling holding that dredges are not vessels within the meaning of section 811(b)(5) and section 907(c)(3) of the Social Security Act. The case has been reconsidered.

This office now holds that dredges which are intended and adapted for navigation and transportation by water of their crews, supplies and machinery, from point to point, in carrying on the work of deepening and removing ob-

structions from channels and harbors in aid of navigation and commerce are vessels within the meaning of section 811,b) (5) and section 907(c) (3) of the Act. Where such dredges are operated in navigable waters of the United States, the services performed by the officers and members of the crew come withing the excepting provisions of section 907(c) (3) and the wages payable to the employees on account of such services should not be included in the computation of wages for the purpose of determing the employer's tax. If such dredges are documented under the laws of the United States, the services of the officers and members of the crew come within the excepting provisions of section 811(b) (5) of the Act.

Respectfully,

(Sgd) Sherwood
Acting Deputy Commissioner.

APPENDIX B

Form No. 7802—Jan. 1922

TREASURY DEPARTMENT
INTERNAL REVENUE BUREAU,
Comptroller General U. S.

Washington, D. C.

NOTICE OF ADJUSTMENT OF CLAIM FOR ABATEMENT

Claim No. 439730 District of Louisiana

Schedule No. EmT:FICA:A 14848

Standard Dredging Corporation (New York)
on behalf of the United Dredging Company,
1402 Whitney Building,
New Orleans, Louisiana.

Sirs:

Your claim for abatement of employers' and employees' taxes and interest assessed under Title VIII of the Social Security Act for the quarters ended June 30, September 30, and December 31, 1938, has been adjusted as shown below.

Claimed $5,527.77 Allowed $5,527.77 Rejected $.....

The claim is allowed in full for the reason that the amount thereof represents taxes and interest erroneously assessed with respect to remuneration for services which are excepted from "employment" by reason of the provisions of Section 811(b)(5) of the Social Security Act.

Your account with the Collector of Internal Revenue will be adjusted accordingly.

In case of a rejected amount, payment should be made to the Collector of Internal Revenue at_____ at once, together with interest which has accrued.

Respectfully,

(Sgd) Goe. J. Schoeneman
Deputy Commissioner

WMN:HAH

APPENDIX C

ACT 11 of 1940

Section 3. *Benefit eligibility conditions.* An unemployed individual shall be eligible to receive benefts with respect to any week only if the administrator finds that—

(a) He has made a claim for benefits in accordance with the provisions of section 5(a) of this act.

(b) He has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulations as the administrator may prescribe, except that the administrator may, by regulation, waive or alter either or both of the requirements of this subsection as to such types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act; provided that no such regulation shall conflict with section 2(a) of this act.

(c) He is able to work, and is available for work.

(d) He has been unemployed for a waiting period of two weeks. Such weeks of unemployment need not be consecutive. No week shall be counted as a week of unemployment for the purpose of this subsection—

(1) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits, provided that this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment, and provided further that the week

or the two consecutive weeks immediately preceding a benefit year, if part of one uninterrupted period of unemployment which continues into such benefit year, shall be deemed (for the purpose of this subsection only) to be within such benefit year as well as within the preceding year.

(2) If benefits have been paid with respect thereto.

(3) Unless the individual was eligible for benefits with respect thereto as provided in sections 3 and 4 of this act, except for the requirements of this subsection and of subsection (e) of section 4.

(e) He has during his base period been paid wages for insured work equal to not less than twenty times his weekly benefit amount. For the purposes of this subsection wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by which such wages were paid has satisfied the conditions of section 18(f) or section 7(c) with respect to becoming an employer. (Acts 1936, No. 97, § 3; 1938, No. 164, § 2; 1940, No. 11, § 3).

APPENDIX D

ACT 11 of 1940

Section 4. *Disqualification for benefits*—An individual shall not be eligible for benefits—

(a) For the week in which he left his work voluntarily without good cause, if so found by the administrator, and for not more than the six weeks, which immediately follow such week, as determined by the administrator according to the circumstances in each case.

(b) For the week in which he has been discharged for misconduct connected with his work if so found by the administrator, and for not more than the six weeks which immediately follow such week, as determined by the administrator in each case according to the seriousness of the misconduct.

(c) If the administrator finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the administrator, or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the administrator. Such [in] eligibility shall continue for the weeks in which such failure occurred and for not more than the six weeks which immediately follow such week as determined by the administrator according to the circumstances in such case.

(1) In determining whether or not any work is suitable for an individual, the administrator shall consider among other factors the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of

unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is or was last employed.

Provided that such disqualification shall not exceed the three weeks immediately following the beginning of such dispute; and provided further that this subsection shall not apply if it is shown to the satisfaction of the administrator (1) he is not participating in or directly interested in the labor dispute which caused his unemployment, and (2) he does not belong to a grade or class of workers of which immediately before the commencement of the dispute there were members employed at the premises at which the dispute occurs, any of whom are participating in or directly interested in the dispute.

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

(e) For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States, provided that if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply. (Acts 1936, No. 97, § 4; 1938, No. 164, § 2; 1940, No. 11, §4.)

APPENDIX E

ACT 11 of 1940

Section 13. *Collection of contributions.*—

(a) *Interest on Past-due Contributions.* If contributions are not paid on the date on which they are due and payable as prescribed by the administrator, the whole or part thereof remaining unpaid shall bear interest at the rate of one per centum per month from and after such date until payment is received by the administrator, and shall be further subject to a penalty of ten per centum, (10%) attorney's fees on both contributions and interest. In computing interest for any period less than a full month, the rate shall be one-tenth (1/10) of one per centum, for each three-day period or part thereof. The date as of which payment of contributions, if mailed, is deemed to have been received may be determined by such regulations as the administrator may prescribe. Interest and penalties collected pursuant to this subsection shall be paid into the unemployment compensation fund.

(b) Collection. (1) If, after due notice, any employer defaults in any payment of contributions, or interest thereon, the amount may be collected by civil action in the name of the administrator, and the employer adjudged in default shall pay the cost of such action, interest and attorney's fees. Civil action brought under this section to collect contributions or interest, or attorney's fees thereon, from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other actions except petitions for judicial review under this act and cases arising under the workmen's compensation laws of this state. Such action shall be by rule to show cause within five (5) days why payments should not be made, and may be tried out of term time and in chambers.

(2) If any employer fails to file a report or return required by the administrator for the determination of contributions, the administrator may make such reports or returns, or cause same to be made, and determine the contributions payable, on the basis of such information as he may be able to obtain, and shall collect the contributions so determined, together with any interest, attorney's fees, and other penalties thereon due under this act.

(3) If any employer defaults in any payment of contributions or interest, attorney's fees and other penalties thereon, then the administrator or his duly authorized representatives may take in any manner feasible, and cause to be recorded in the mortgage records of any parish in which such employer is engaged in business and/or owns real or personal property, a statement, under oath showing the amount of the contributions, interest and penalties in default; which statement, when filed for record, shall operate as a first lien, privilege, and mortgage on all of the real and personal property of the employer from the date of such filing only, and shall not affect liens, privileges, chattel mortgages, or mortgages already affecting or burdening such property at the date of such filing; and the property of such employer shall be subject to seizure and sale for the payment of such contributions, interest, attorney's fees, and other penalties according to the preference and rank of said lien, privilege and mortgage securing their payment.

(4) In any proceedings brought by the administrator for the collection of contributions, the burden of proof upon all questions of fact shall be upon the defendant, but only as to those facts which the administrator, his representative or attorney, shall swear are to the best of his knowledge or belief true.

(5) The administrator shall not be required to furnish any court bond, nor to make a deposit for or pay any costs of court in any legal proceedings, nor to pay any costs

or fees in connection with the recordation in the mortgage records of any parish of a sworn statement showing the amount of contributions, interest and penalties in default by an employer. No clerk of any court, sheriff, recorder of mortgages, or any other public official shall fail or refuse to perform any service in connection with proceedings brought by the administrator on the ground that costs have not been advanced or guaranteed, nor shall they be entitled to charge for any certified copies of any document which they shall be required to furnish on request of the administrator.

(c) *Priorities under Legal Dissolution or Distributions.* In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, liquidation, assignment for the benefit of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims, except taxes, and claims for wages of not more than $250.00 to each claimant earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition under the Federal Bankruptcy Act of 1898 (3 F. C. A., Tit. 11, § 1-303), as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64(b) of that act (U. S. C., tit. 11, sec. 104(b); 3 F. C. A., Tit. 11, § 104(b).

(d) Dissolution. The secretary of state shall withhold the issuance of any certificate of dissolution of any corporation organized under the laws of this state, or any certificate of withdrawal of any corporation organized under the laws of another state and admitted to do business in this state, until the receipt of a certificate from the administrator to the effect that all contributions due from such corporation as an employer have been paid, or that such corporation is not subject to contributions hereunder.

(e) Payment of Contribution before Discharge or Dissolution. No liquidator, receiver, or trustee shall deliver possession of any property of an employing unit until contribution due have (has) been paid the administrator; otherwise, they, together with their sureties, shall be personally liable therefor, with interest and costs. Nor shall any partnership be dissolved until contribution due by the partnership is paid; otherwise the partners shall be liable in solido therefor, with interest, penalties, and costs.

(f) Successive Employers Liability. Any person, group of individuals, partnership, or employing unit which acquires the organization, trade or business, or substantially all the assets thereof, from an employer shall notify the administrator in writing by registered mail not later than five days prior to the acquisition. Unless such notice is given, such acquisition shall be void as against the administrator, if, at the time of the acquisition, any contributions are due and unpaid by the previous employer; and the administrator shall have the right to proceed against such employer either in personam or in rem, and the assets so acquired shall be subject to attachment for such debt.

(g) Refunds and Adjustments. (1) If not later than three years after the date on which any contributions or interest or penalties thereon became due, an employing unit which has paid such contributions or interest or penalties thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment can not be made, and the administrator shall determine that such contributions or interest or penalties or any portion thereof were erroneously collected, the administrator shall allow such employing unit to make an adjustment thereof, without paying interest upon the same, in connection with subsequent contribution payments by it, or if such adjustment can not be made, the administrator shall refund said amount, without interest upon same from the

unemployment compensation fund. For like cause and within the said period, adjustments or refund may be so made on the administrator's own initiative.

(2) Any adjustment made with respect to contributions from any individual employed by an employing unit, either upon the application of the employing unit of such individual, the individual, or by the administrator on his own initiative, within the period prescribed in paragraph (1) of ths subsection, shall be deductible from the amount of subsequent contributions required of such individual, if any; or if such adjustment can not be made, the administrator shall refund said amount to such individual, without interest, from the fund. (Acts 1936, No. 97, § 13; 1938, No. 164, § 2; 1940, No. 11, § 9; 1942, No. 133, § 1.)

SUPREME COURT OF THE UNITED STATES.

No. 849.—October Term, 1942.

Great Lakes Dredge & Dock Company, et al., Petitioners,
vs.
C. C. Huffman, Administrator, Division of Employment Security, Louisiana Department of Labor, etc.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 24, 1943.]

Mr. Chief Justice Stone delivered the opinion of the Court.

Petitioners brought this suit in the district court against respondent, a state officer charged with the administration and enforcement of the Louisiana Unemployment Compensation Law (Act 97 of 1936, as amended by Act 164 of 1938, Act 16 of the First Extraordinary Session of 1940, and Acts 10 and 11 of 1940). The complaint alleges that petitioners have numerous classes of employees engaged in the navigation and operation of dredges and pile drivers and in the operation of quarter boats, tugs, launches, barges and other vessels, all used in deepening, dredging, extending and otherwise improving channels underlying the navigable waters of the state; and that the tax or contribution to the state unemployment insurance fund which the state law would exact from each of petitioners exceeded, when the suit was brought, the sum of $3,000. The relief prayed is a declaratory judgment that the state law as applied to petitioners and their employees is unconstitutional and void.

After a trial the district court held the statute applicable to petitioners and their employees and, as applied to them, a valid exercise of state power. 43 F. Supp. 981. The formal judgment ordered dismissal of the suit, but it is to be interpreted in the light of the court's opinion, findings, and conclusions of law. *Metropolitan Co.* v. *Kaw Valley District*, 223 U. S. 519, 523; *Gulf Refining Co.* v. *United States*, 269 U. S. 125, 135; *Clark* v. *Williard*, 292 U. S. 112, 118; *American Propeller Co.* v. *United States*, 300 U. S. 475, 479-80. So interpreted it rests wholly on

the court's declaration that the statute applied to petitioners is constitutional; it is thus in effect a declaratory judgment.

The Court of Appeals for the Fifth Circuit affirmed, 134 F. 2d 213, holding that the statute, in exacting from employers contributions to the state unemployment compensation fund, is a valid exercise of the state taxing power (see *Steward Machine Co. v. Davis,* 301 U. S. 548; *Carmichael* v. *Southern Coal Co.,* 301 U. S. 495); that the application of the Act to petitioners would not interfere with any characteristic feature of the general maritime law in its interstate and international aspects so as to fall under the ban of *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205, and cases following it; and that the Federal Social Security Act, 26 U. S. C. § 1607(c)(4), by exempting from its operation officers and crews of vessels, has not "preempted the field" or otherwise precluded the state from applying its law with respect to the employees in question.

Because of the public importance of the questions decided, we granted certiorari, 318 U. S. —, and set the case for argument with No. 722, *Standard Dredging Corporation* v. *Miller,* and No. 723, *International Elevating Co.* v. *Miller,* which are here on appeal. In our order granting the writ, we requested counsel "to discuss in their briefs and on oral argument the question whether the declaratory judgment procedure can be appropriately used in this case where the complaint seeks a judgment against a state officer to prevent enforcement of a state statute".

The state act, as the court below held, exacts of employers payments into the state unemployment insurance fund, in the nature of an excise tax upon the exercise of the right or privilege of employing individuals and measured by a percentage of the wages paid. See *Carmichael* v. *Southern Coal & Coke Co., supra.* Petitioners have challenged the state's right to collect the tax, and have interposed, as a barrier to the collection, the present suit in the federal court for a declaratory judgment. The district court, as we have indicated, has in substance given a declaratory judgment, which the Circuit Court of Appeals has sustained. Save for that purpose those courts had no occasion to entertain the suit, or pronounce any judgment in it. Neither court, nor any of the parties, has questioned the sufficiency of the pleadings to present a case for a declaratory judgment. Without raising that issue here we pass at once to the question, submitted to counsel, whether the declaratory judgment procedure may be appropriately resorted to in the circumstances of this case.

In answering it the nature of the remedy afforded to taxpayers by state law for the illegal exaction of the tax is of importance. Section 18 of Article 10 of the Constitution of Louisiana of 1921 directs that: "The Legislature shall provide against the issuance of process to restrain the collection of any tax and for a complete and adequate remedy for the prompt recovery by every taxpayer of any illegal tax paid by him." And Act 330 of 1938 sets up a complete statutory scheme to carry into effect the constitutional provision. By it the courts of the state are forbidden to restrain the collection of any state tax; and any person aggrieved and "resisting the payment of any amount found due, or the enforcement of any provision of such laws in relation thereto" shall pay the tax to the appropriate state officer and file suit for its recovery in either the state or federal courts. Pending the suit the amount collected is required to be segregated and held subject to any judgment rendered in the suit. If the taxpayer prevails in the suit, interest at two per cent per annum is added to the amount of taxes refunded.

This Court has recognized that the federal courts, in the exercise of the sound discretion which has traditionally guided courts of equity in granting or withholding the extraordinary relief which they may afford, will not ordinarily restrain state officers from collecting state taxes where state law affords an adequate remedy to the taxpayer. *Matthews* v. *Rodgers*, 284 U. S. 521. This withholding of extraordinary relief by courts having authority to give it is not a denial of the jurisdiction which Congress has conferred on the federal courts, or of the settled rule that the measure of inadequacy of the plaintiff's legal remedy is the legal remedy afforded by the federal not the state courts. *Stratton* v. *St. L. S. W. Ry.*, 284 U. S. 530, 533-34; *Di Giovanni* v. *Camden Ins. Assn.*, 296 U. S. 64, 69. On the contrary, it is but a recognition that the jurisdiction conferred on the federal courts embraces suits in equity as well as at law, and that a federal court of equity, which may in an appropriate case refuse to give its special protection to private rights when the exercise of its jurisdiction would be prejudicial to the public interest (*United States* v. *Dern*, 289 U. S. 352, 359-360; *Virginian Ry.* v. *Federation*, 300 U. S. 515, 549-53), should stay its hand in the public interest when it reasonably appears that private interests will not suffer. See *Pennsylvania* v. *Williams*, 294 U. S. 176, 185, and cases cited.

It is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of the states.

"The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved". *Matthews* v. *Rodgers, supra,* 525-26.

Interference with state internal economy and administration is inseparable from assaults in the federal courts on the validity of state taxation, and necessarily attends injunctions, interlocutory or final, restraining collection of state taxes. These are the considerations of moment which have persuaded federal courts of equity to deny relief to the taxpayer—especially where the state, acting within its constitutional authority, has set up its own adequate procedure for securing to the taxpayer the recovery of an illegally exacted tax.

Congress recognized and gave sanction to this practice of federal equity courts by the Act of August 21, 1937, 50 Stat. 738, enacted as an amendment to Section 24 of the Judicial Code, 28 U. S. C. § 41(1). This provides that "no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such state." The earlier refusal of federal courts of equity to interfere with the collection of state taxes unless the threatened injury to the taxpayer is one for which the state courts afford no adequate remedy, and the confirmation of that practice by Congress, have an important bearing upon the appropriate use of the declaratory judgment procedure by the federal courts as a means of adjudicating the validity of state taxes.

It is true that the Act of Congress speaks only of suits "to enjoin, suspend, or restrain the assessment, levy, or collection of any tax" imposed by state law, and that the declaratory judg-

ment procedure may be, and in this case was, used only to procure a determination of the rights of the parties, without an injunction or other coercive relief. It is also true that that procedure may in every practical sense operate to suspend collection of the state taxes until the litigation is ended. But we find it unnecessary to inquire whether the words of the statute may be so construed as to prohibit a declaration by federal courts concerning the invalidity of a state tax. For we are of the opinion that those considerations which have led federal courts of equity to refuse to enjoin the collection of state taxes, save in exceptional cases, require a like restraint in the use of the declaratory judgment procedure.

The statutory authority to render declaratory judgments permits federal courts by a new form of procedure to exercise the jurisdiction to decide cases or controversies, both at law and in equity, which the Judiciary Acts had already conferred. *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227. Thus the Federal Declaratory Judgments Act (Act of June 14, 1934, 48 Stat. 955, as amended, 28 U. S. C. § 400) provides in § 1 that a declaration of rights may be awarded although no further relief be asked, and in § 2 that "further relief based on a declaratory judgment or decree may be granted whenever necessary or proper".

The jurisdiction of the district court in the present suit, praying an adjudication of rights in anticipation of their threatened infringement, is analogous to the equity jurisdiction in suits *quia timet* or for a decree quieting title. See *Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U. S. 249, 263. Called upon to adjudicate what is essentially an equitable cause of action, the district court was as free as in any other suit in equity to grant or withhold the relief prayed, upon equitable grounds. The Declaratory Judgments Act was not devised to deprive courts of their equity powers or of their freedom to withhold relief upon established equitable principles. It only provided a new form of procedure for the adjudication of rights in conformity to those principles. The Senate committee report on the bill pointed out that this Court could, in the exercise of its equity power, make rules governing the declaratory judgment procedure. S. Rep. No. 1005, 73d Cong., 2d Sess., p. 6. And the House report declared that "large discretion is conferred upon the courts as to whether or not they will administer justice by this procedure". H. R. Rep. No. 1264, 73d Cong., 2d Sess., p. 2;

and see *Brillhart* v. *Excess Ins. Co.*, 316 U. S. 491, 494; Borchard, Declaratory *Judgments* (2d ed.) p. 312.

The considerations which persuaded federal courts of equity not to grant relief against an allegedly unlawful state tax, and which led to the enactment of the Act of August 21, 1937, are persuasive that relief by way of declaratory judgment may likewise be withheld in the sound discretion of the court. With due regard for these considerations, it is the court's duty to withhold such relief when, as in the present case, it appears that the state legislature has provided that on payment of any challenged tax to the appropriate state officer, the taxpayer may maintain a suit to recover it back. In such a suit he may assert his federal rights and secure a review of them by this Court. This affords an adequate remedy to the taxpayer, and at the same time leaves undisturbed the state's administration of its taxes.

The Act of August 21, 1937, was predicated upon the desirability of freeing, from interference by the federal courts, state procedures which authorize litigation challenging a tax only after the tax has been paid. See S. Rep. No. 1035, 75th Cong., 1st Sess.; H. R. Rep. No. 1508, 75th Cong., 1st Sess. Even though the statutory command be deemed restricted to prohibition of injunctions restraining collection of state taxes, its enactment is hardly an indication of disapproval of the policy of federal equity courts, or a mandatory withdrawal from them of their traditional power to decline jurisdiction in the exercise of their discretion.

For like reasons, we think it plain also that the enactment of the Act of August 30, 1935, 49 Stat. 1027, 28 U. S. C. § 400(1), which excluded from the operation of the Declaratory Judgments Act all cases involving federal taxes, cannot be taken to deprive the courts of their discretionary authority to withhold declaratory relief in other appropriate cases. This amendment was passed merely for the purpose of "making it clear" that the Declaratory Judgments Act would not permit "a radical departure from the long-continued policy of Congress" to require prompt payment of federal taxes. See S. Rep. No. 1240, 74th Cong., 1st Sess., p. 11; H. R. Rep. No. 1885, 74th Cong., 1st Sess., p. 13.

The judgment of dismissal below must therefore be affirmed, but solely on the ground that, in the appropriate exercise of the court's discretion, relief by way of a declaratory judgment should have been denied without consideration of the merits.

Affirmed.